THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1994 CUMULATIVE SUPPLEMENT

Volume 3

Chapters 8 through 14

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 443 S.E.2d 468. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 3 contains the general laws of a permanent nature enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1 for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1993 (Reg. Sess., 1994) Session affecting Chapters 8 through 14 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 336, p. 77.
North Carolina Court of Appeals Reports through Volume 114, p. 505.
South Eastern Reporter 2nd Series through Volume 443, p. 468.
Federal Reporter 3rd Series through Volume 21, p. 1127.
Federal Supplement through Volume 848, p. 212.
Federal Rules Decisions through Volume 154, p. 535.
Bankruptcy Reports through Volume 166, p. 498.
Supreme Court Reporter through Volume 114, p. 1877.
North Carolina Law Review through Volume 72, p. 1128.
Wake Forest Law Review through Volume 29, p. 646.
Campbell Law Review through Volume 16, p. 145.
Duke Law Journal through Volume 43, p. 1348.
North Carolina Central Law Journal through Volume 20, p. 229.
Opinions of the Attorney General.

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The General Statutes of North Carolina 1994 Cumulative Supplement

VOLUME 3

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ARTICLE 2.

Grants, Deeds and Wills.

§ 8-20: Repealed by Session Laws 1993, c. 288, s. 1, effective July 6, 1993, and applicable to assignments made on or after that date.

Cross References. — For present provision concerning use of certified registered copies as evidence, see § 47-31.

Editor's Note. — Session Laws 1993, c. 288, which repealed this section effective upon ratification, July 6, 1993, in s. 5 provided that the act applied to assignments made on or after that date.

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I. IN GENERAL.

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Competency of Witnesses.

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For note on the admissibility of a criminal defendant's hypnotically refreshed testimony, see 10 Campbell L. Rev. 311 (1988).

§ 8-50.1. Competency of blood tests; jury charge; taxing of expenses as costs.

(a) In the trial of any criminal action or proceeding in any court in which the question of parentage arises, regardless of any presumptions with respect to parentage, the court before whom the matter may be brought, upon motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other duly qualified person. Upon receipt of a motion and the entry of an order under the provisions of this subsection, the court shall proceed as follows:

(1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged-parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and comparisons were conducted properly, then it will be their duty to

decide that the alleged-parent is not the natural parent; whereupon, the court shall enter the special verdict of not guilty; and

(2) By requiring the State or defendant, as the case may be, requesting the blood tests and comparisons pursuant to this subsection to initially be responsible for any of the expenses thereof and upon the entry of a special verdict incorporating a finding of parentage or nonparentage, by taxing the expenses for blood tests and comparisons, in addition to any fees for expert witnesses allowed per G.S. 7A-314 whose testimonies supported the admissibility thereof, as costs in accordance with G.S. 7A-304; G.S. Chapter 6, Article 7; or G.S. 7A-315, as applicable.

(b) Repealed by Session Laws 1993, c. 333, s. 2, effective October 1, 1993.

(b1) In the trial of any civil action in which the question of parentage arises, the court shall, on motion of a party, order the mother, the child, and the alleged father-defendant to submit to one or more blood or genetic marker tests, to be performed by a duly certified physician or other expert. The court shall require the person requesting the blood or genetic marker tests to pay the costs of the tests. The court may, in its discretion, tax as part of costs the expenses for blood or genetic marker tests and comparisons. Verified documentary evidence of the chain of custody of the blood specimens obtained pursuant to this subsection shall be competent evidence to establish the chain of custody. Any party objecting to or contesting the procedures or results of the blood or genetic marker tests shall file with the court written objections setting forth the basis for the objections and shall serve copies thereof upon all other parties not less than 10 days prior to any hearing at which the results may be introduced into evidence. The person contesting the results of the blood or genetic marker tests has the right to subpoena the testing expert pursuant to the Rules of Civil Procedure. If no objections are filed within the time and manner prescribed, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. The results of the blood or genetic marker tests shall have the following effect:

(1) If the court finds that the conclusion of all the experts, as disclosed by the evidence based upon the test, is that the probability of the alleged parent's parentage is less than eighty-five percent (85%), the alleged parent is presumed not to be the parent and the evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence;

(2) If the experts disagree in their findings or conclusions, the question of paternity shall be submitted upon all the evidence;

(3) If the tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is between eighty-five percent (85%) and ninety-seven percent (97%), this evidence shall be admitted by the court and shall be weighed with other competent evidence;

(4) If the experts conclude that the genetic tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is ninety-seven percent

(97%) or higher, the alleged parent is presumed to be the parent and this evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence. (1949, c. 51; 1965, c. 618; 1975, c. 449, ss. 1, 2; 1979, c. 576, s. 1; 1993, c. 333, s. 2; 1993 (Reg. Sess., 1994), c. 733, s. 1.)

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, and applicable to civil paternity actions filed on or after that date, deleted former subsection (b) and added present subsection (b1) on similar subject matter.

The 1993 (Reg. Sess., 1994) amendment, effective August 1, 1994, and applicable to civil actions commenced on or after that date, substituted the present fifth, sixth, and seventh sentences of subsection (b1), beginning "Any party objecting" and ending "authenticity or accuracy" for "The testing expert's completed and certified report of the results and conclusions of the paternity blood test or genetic marker test is admissible as evidence without additional testimony by the expert if the laboratory in which the expert performed the test is accredited for parentage testing by the American Association of Blood Banks. Accreditation may be established by verified statement or reference to published sources. Any person contesting the results of a blood or genetic marker test has the right to subpoena the testing expert pursuant to the Rules of Civil Procedure."

CASE NOTES

Editor's Note. — *The cases represented by the following annotations were decided under this section as it stood before the 1993 amendment, which provides for the admissibility of a certified report of the results of a paternity blood test or genetic marker test without additional expert testimony, and assigns weight to such evidence according to the probability of parentage.*

Scope of Section. — This section authorizes blood tests only upon motion made by either the State or the defendant, and the court involved in the matter must order the test. The statute does not authorize the indiscriminate taking of blood, nor does it allow the performance of a blood test by anyone than a trained technician or anywhere other than a medical facility. State v. Mauney, 106 N.C. App. 26, 415 S.E.2d 208 (1992).

Former subdivision (b)(1) of this section (see now subsection (b1)) was applicable to civil actions only; the statute which applies to criminal actions is subdivision (a)(1). State v. McInnis, 102 N.C. App. 338, 401 S.E.2d 774, cert. denied, 329 N.C. 274, 407 S.E.2d 848 (1991).

Section Not Applicable in Rape Case. — This section applies only where "the question of parentage arises." A question of parentage is not central to a charge of rape. Thus, the commands of this section are inapplicable in a rape case. State v. Jackson, 320 N.C. 452, 358 S.E.2d 679 (1987).

Inconsistent Results Allowed. — This statute simply provides that when test results are consistent and show the defendant not to be the father of the child, the jury is required to return a special verdict of not guilty. Nothing in this statute prohibits the admission into evidence of inconsistent results. State v. McInnis, 102 N.C. App. 338, 401 S.E.2d 774, cert. denied, 329 N.C. 274, 407 S.E.2d 848 (1991).

Varying Results of Blood Tests. — Court did not err by admitting the result of blood tests showing the probability of defendant's fathering the child to be 99.54%, even though it varied greatly from the result of blood tests performed by another laboratory showing the probability of paternity to be only 93.75%. State v. McInnis, 102 N.C. App. 338, 401 S.E.2d 774, cert. denied, 329 N.C. 274, 407 S.E.2d 848 (1991).

§ 8-50.2. Results of speed-measuring instruments; admissibility.

(a) The results of the use of radio microwave, laser, or other speed-measuring instruments shall be admissible as evidence of the speed of an object in any criminal or civil proceeding for the purpose of corroborating the opinion of a person as to the speed of an object based upon the visual observation of the object by such person.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a radio microwave, laser, or other electronic speed-measuring instrument are not admissible in any proceeding unless it is found that:

(1) The operator of the instrument held, at the time the results of the speed-measuring instrument were obtained, a certificate from the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter referred to as the Commission) authorizing him to operate the speed-measuring instrument from which the results were obtained.

(2) The operator of the instrument operated the speed-measuring instrument in accordance with the procedures established by the Commission for the operation of such instrument.

(3) The instrument employed was approved for use by the Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.

(4) The speed-measuring instrument had been calibrated and tested for accuracy in accordance with the standards established by the Commission for that particular instrument.

(c) All radio microwave and other electronic speed-measuring instruments shall be tested for accuracy by a technician possessing at least a second-class or general radiotelephone license from the Federal Communications Commission or a certification issued by organizations or committees endorsed by the Federal Communications Commission within a period of 12 months prior to the alleged violation. A written certificate by such technician showing that the test was made within the required period and that the instrument was accurate shall be competent and prima facie evidence of those facts in any proceeding referred to in subsection (a) of this section.

All laser speed enforcement instruments shall be tested in accordance with standards established by the Commission. The Commission shall provide for certification of laser speed enforcement instruments. A written certificate by a technician certified by the Commission showing that a test was made within the required testing period and that the instrument was accurate shall be competent and prima facie evidence of those facts in any proceeding referred to in subsection (a) of this section.

(d) In every proceeding where the results of a radio microwave, laser, or other speed-measuring instrument is sought to be admitted, judicial notice shall be taken of the rules approving the use of the models and types of radio microwave and other speed-measuring instruments and the procedures for operation and calibration or measuring accuracy of such instruments. (1979, 2nd Sess., c. 1184, s. 3; 1983, c. 34; 1987, c. 318; c. 827, s. 60; 1994, Ex. Sess., c. 18, s. 1.)

Effect of Amendments. — Session Laws 1987, c. 318, effective June 8, 1987, inserted "or a certification issued by organizations or committees endorsed by the Federal Communications Commission" and substituted "12 months" for "six months" in the first sentence of subsection (c).

Session Laws 1987, c. 827, s. 60, effective August 13, 1987, deleted "when such rules are filed with the Attorney General in accordance with General Statutes Chapter 150A" at the end of subsection (d).

The 1994 Extra Session amendment, effective March 18, 1994, in subsections (a), (b) and (d) substituted "microwave, laser," for "microwave"; and added the second paragraph of subsection (c).

§ 8-53. Communications between physician and patient.

Legal Periodicals. —

For note on the admissibility of a criminal defendant's hypnotically refreshed testimony, see 10 Campbell L. Rev. 311 (1988).

For article, "What's the Harm in Asking?: A Discussion of Waiver of the Physician-Patient Privilege and Ex Parte Interviews with Treating Physicians," see 19 N.C. Cent. L.J. 1 (1990).

For comment on the prohibition of ex parte contacts with a plaintiff's treating physician, see 13 Campbell L. Rev. 233 (1991).

For note, "Restricting Ex Parte Interviews with Nonparty Treating Physicians: Crist v. Moffatt," see 69 N.C.L. Rev. 1381 (1991).

CASE NOTES

I. General Consideration.
II. Nature and Scope of Privilege.
III. Waiver.
IV. Compelled Disclosure.

I. GENERAL CONSIDERATION.

Purpose of Section. —

In accord with second paragraph in the main volume. See Cates v. Wilson, 83 N.C. App. 448, 350 S.E.2d 898 (1986), modified, 321 N.C. 1, 361 S.E.2d 734 (1987).

Proper Administration of Justice. — This section sets forth the procedure to compel disclosure of information which ordinarily is protected by the doctor-patient privilege. Such information may be disclosed by order of the court if in the opinion of the trial judge disclosure is necessary to the proper administration of justice. This decision is one made in the discretion of the trial judge, and the defendant must show an abuse of discretion in order to successfully challenge the ruling. State v. Drdak, 330 N.C. 587, 411 S.E.2d 604 (1992).

Disclosure if Necessary to a Proper Administration of Justice. — Although a witness may be impeached by a showing of mental deficiency as it bears upon the witness' credibility, medical records for treatment purposes are privileged and the contents of such records may be disclosed only if, in the opinion of the trial court, disclosure is necessary to a proper administration of justice. State v. Adams, 103 N.C. App. 158, 404 S.E.2d 708 (1991).

For discussion of distinction between statutory physician-patient privilege and rule prohibiting unauthorized ex parte contacts with patient's nonparty treating physicians, see Crist v. Moffatt, 326 N.C. 326, 389 S.E.2d 41 (1990).

Defense counsel may not interview medical malpractice plaintiff's nonparty treating physicians privately without plaintiff's express consent. Defendant instead must utilize the statutorily recognized methods of discovery enumerated in § 1A-1, Rule 26. Crist v. Moffatt, 326 N.C. 326, 389 S.E.2d 41 (1990).

Applied in Prince v. Duke Univ., 326 N.C. 787, 392 S.E.2d 388 (1990).

Cited in Shelton v. Morehead Mem. Hosp., 318 N.C. 76, 347 S.E.2d 824 (1986); State v. Newell, 82 N.C. App. 707, 348 S.E.2d 158 (1986); Crist v.

Moffatt, 92 N.C. App. 520, 374 S.E.2d 487 (1988).

II. NATURE AND SCOPE OF PRIVILEGE.

Qualified Privilege. — The privilege established by this section is not absolute, but qualified. Cates v. Wilson, 83 N.C. App. 448, 350 S.E.2d 898 (1986), modified, 321 N.C. 1, 361 S.E.2d 734 (1987).

III. WAIVER.

Privilege May Be Waived. —

A patient may waive the privilege under this section; the waiver may be express or implied. Cates v. Wilson, 83 N.C. App. 448, 350 S.E.2d 898 (1986), modified on other grounds, 321 N.C. 1, 361 S.E.2d 734 (1987).

A patient may expressly or impliedly waive his physician-patient privilege during discovery and at trial. Adams v. Lovette, 105 N.C. App. 23, 411 S.E.2d 620, aff'd, 332 N.C. 659, 422 S.E.2d 575 (1992).

The privilege is waived by implication where, etc. —

In accord with the main volume. See Cates v. Wilson, 83 N.C. App. 448, 350 S.E.2d 898 (1986), modified on other grounds, 321 N.C. 1, 361 S.E.2d 734 (1987).

Plaintiff May Not Waive Privilege as to Information But Not as to Other Matters. — When the patient breaks the fiduciary relationship with the physician by revealing, or permitting revelation of, the substance of the information transmitted to the physician, the patient has, in effect, determined that it is no longer important that the confidences which the privilege protects continue to be protected. Having taken this position, the plaintiff may not silence the physician as to matters otherwise protected by the privilege. Cates v. Wilson, 321 N.C. 1, 361 S.E.2d 734 (1987).

Such as Opinions. — There is no statutory basis for allowing a patient to waive his privilege as to information gained by his physician while maintaining it as to his physician's opinions. Cates v. Wilson, 321 N.C. 1, 361 S.E.2d 734 (1987).

When a patient dissolves the fiduciary relationship with his physician by disclosing or permitting disclosure of details of their consultations, he should not, in fairness, be allowed to prevent the physician from stating an opinion which might aid the trier of fact in assessing the merits of the patient's case. To hold otherwise would enable patients to use the privilege not defensively to protect their confidences but offensively to suppress the truth in litigation. Cates v. Wilson, 321 N.C. 1, 361 S.E.2d 734 (1987).

Following Waiver, Plaintiff May Not Prohibit Physicians from Testifying for Defendant. — A plaintiff who has waived his physician-patient privilege as to nonparty treating physicians may not preclude these physicians from testifying as experts for the defendant. Cates v. Wilson, 321 N.C. 1, 361 S.E.2d 734 (1987).

Once a plaintiff waives his right to prohibit disclosures of confidences by his physicians, he may not assert the physician-patient privilege to prevent them from testifying as experts for his opponent. Cates v. Wilson, 321 N.C. 1, 361 S.E.2d 734 (1987).

IV. COMPELLED DISCLOSURE.

Trial Judge May Compel Disclosure. —

In accord with third paragraph in the main volume. See State v. Fullwood, 323 N.C. 371, 373 S.E.2d 518 (1988), vacated and remanded for further consideration at 494 U.S. —, 110 S. Ct. 1464, 108 L. Ed. 2d 602 (1990) in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990).

The trial court may compel the physician or surgeon to disclose communications and information obtained by him if in the judge's opinion the same is necessary to a proper administration of justice. Cates v. Wilson, 83 N.C. App. 448, 350 S.E.2d 898 (1986), modified, 321 N.C. 1, 361 S.E.2d 734 (1987).

But Only as to Matters Necessary to Proper Administration of Justice.—

This section affords the trial judge wide discretion in determining what is necessary for a proper administration of justice. Cates v. Wilson, 83 N.C. App. 448, 350 S.E.2d 898 (1986), modified, 321 N.C. 1, 361 S.E.2d 734 (1987).

Child Abuse Cases. — By virtue of §§ 8-53.2 and 7A-551, the physician-patient privilege, created by § 8-53 is not available in cases involving child abuse. State v. Etheridge, 319 N.C. 34, 352 S.E.2d 673 (1987).

Any privilege which the defendant, who sought treatment of a sexually transmittable disease after he had been charged with sexual crimes against his children and taken into custody, might have been entitled to this section was nullified by §§ 8-53.1 and 7A-551. State v. Etheridge, 319 N.C. 34, 352 S.E.2d 673 (1987).

Disclosure Properly Compelled. — Where the trial court received evidence and heard arguments before ruling that the privilege should be waived and the testimony allowed into evidence, the record failed to establish that this ruling could not have been the result of a reasoned decision. State v. Fullwood, 323 N.C. 371, 373 S.E.2d 518 (1988), vacated and remanded for further consideration at 494 U.S. —, 110 S. Ct. 1464, 108 L. Ed. 2d 602 (1990) in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990).

§ 8-53.1. Physician-patient privilege waived in child abuse.

Legal Periodicals. —

For article, "What's the Harm in Asking?: A Discussion of Waiver of the Physician-Patient Privilege and Ex Parte Interviews with Treating Physicians," see 19 N.C. Cent. L.J. 1 (1990).

CASE NOTES

This section is to be read in pari materia, etc. —

In accord with the main volume. See State v. Etheridge, 319 N.C. 34, 352 S.E.2d 673 (1987).

Section applies irrespective of when the medical information was obtained. — Section 7A-551 and this section plainly facilitate the prosecution of child abusers, without regard to whether the medical information was obtained before or after the accused was officially charged with a crime. State v. Etheridge, 319 N.C. 34, 352 S.E.2d 673 (1987).

Evidence That Defendant Sought Treatment of Sexually Transmitted Disease. — Any privilege which defendant, who sought treatment of a sexually transmittable disease after he had been charged with sexual crimes against his children and taken into custody, might have been entitled to by § 8-53 was nullified by this section and § 7A-551. State v. Etheridge, 319 N.C. 34, 352 S.E.2d 673 (1987).

§ 8-53.2. Communications between clergymen and communicants.

Legal Periodicals. —

For note on the clergy-communicant privilege, see 65 N.C.L. Rev. 1390 (1987).

CASE NOTES

Expectation of Trust and Confidentiality in Covered Communications. — The legislature's excision of the term "confidential" from the current version of this statute was clearly not intended to broaden application of the privilege to all genre of general conversation with one's spiritual mentor, but merely to broaden the range of advisory and counseling practices to which it applies. The expectation of trust and confidentiality inherent in communications covered under the prior statute was not affected by the legislature's modification in 1967 of that statute's wording. State v. West, 317 N.C. 219, 345 S.E.2d 186 (1986).

No Discretion in Court to Compel Disclosure When Privilege Exists. — The 1967 amendment to this section revealed the General Assembly's intent to remove from the trial courts any discretion to compel disclosure when the clergy-communicant's privilege exists. State v. Barber, 317 N.C. 502, 346 S.E.2d 441 (1986).

Privilege Held Inapplicable. — This section was not applicable where the person to whom defendant confided was not an ordained or licensed minister of any church and did not hold any office in any church, although he had preached from the pulpit several times and had taught Sunday school, and where the court found that the defendant did not make statements while seeking spiritual comfort and guidance, but that they were conversational statements in which he confided to a friend. State v. Barber, 317 N.C. 502, 346 S.E.2d 441 (1986).

Where preacher, who had told defendant's wife the day before that defendant needed help and that he was going to try to help him, sought out defendant for that purpose, and meeting attended by defendant, preacher and the preacher's wife was not one in which defendant had any reason to expect confidentiality, as the conversation appeared to be one in which the preacher was offering his advice and counsel, but not one in which defendant's admissions were entrusted to him in pursuit of such counsel and advice, this section did not apply. State v. West, 317 N.C. 219, 345 S.E.2d 186 (1986).

§ 8-53.3. Communications between psychologist and client or patient.

No person, duly authorized as a licensed psychologist or licensed psychological associate, nor any of his or her employees or associates, shall be required to disclose any information which he or she may have acquired in the practice of psychology and which information was necessary to enable him or her to practice psychology. Any resident or presiding judge in the district in which the action is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in his or her opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.

Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 44 of Chapter 7A, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes. (1967, c. 910, s. 18; 1983, c. 410, ss. 3, 7; 1987, c. 323, s. 2; 1993, c. 375, s. 2; c. 553, s. 78.)

Effect of Amendments. — The 1987 amendment, effective June 8, 1987, added the second paragraph.

Session Laws 1993, c. 375, s. 2, effective October 1, 1993, as amended by Session Law 1993, c. 553, s. 78, effective July 24, 1993, added "or patient" to the end of the section catchline; in the first sentence of the first paragraph substituted "licensed psychologist or licensed psychological associate" for "practicing psychologist or psychological examiner", inserted "or her" following "of his", inserted "or she" following "which he", substituted "the practice of psychology" for "rendering professional psychological services", inserted "or her" following "enable him" and substituted "practice psychology" for "render professional psychological services"; in the second sentence of the first paragraph inserted "or her" following "if in his"; in the first sentence of the second paragraph inserted "or patient" following "psychologist-client" and inserted the language beginning "failure to report suspected child abuse" through the end of the first sentence and the language beginning the second sentence through "shall not be grounds for"; in the second sentence of the second paragraph inserted "or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof" following "the cause thereof", inserted "or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A" following "Article 44 of Chapter 7A".

Legal Periodicals. —

For note on the admissibility of a criminal defendant's hypnotically refreshed testimony, see 10 Campbell L. Rev. 311 (1988).

CASE NOTES

Testimony Proper Where No Privilege Existed. — Where defendant to a charge of first-degree sexual offense telephoned a clinical psychologist and made an appointment, but doctor recognized a conflict of interest because she was also treating defendant's wife and stepdaughters, doctor telephoned defendant to refer him to another psychologist, and defendant then stated to her that he had been seduced by his stepdaughter, the trial court, by allowing this testimony and compelling disclosure over defendant's objection on the basis that it was "necessary to the proper administration of justice" as allowed by this section, acted properly, since under the second paragraph of this section the psychologist-patient privilege did not exist. State v. Knight, 93 N.C. App. 460, 378 S.E.2d 424, cert. denied, 325 N.C. 230, 381 S.E.2d 789 (1989).

Cited in State v. Newell, 82 N.C. App. 707, 348 S.E.2d 158 (1986).

§ 8-53.8. Counselor privilege.

No person, duly licensed pursuant to Chapter 90, Article 24, of the General Statutes, shall be required to disclose any information which he or she may have acquired in rendering professional counseling services, and which information was necessary to enable him or her to render professional counseling services: Provided, that the presiding judge of a superior or district court may compel such disclosure, if in the court's opinion the same is necessary to a proper administration of justice and such disclosure is not prohibited by other statute or regulation. (1983, c. 755, s. 2; 1993, c. 514, s. 2.)

Editor's Note. — Session Laws 1993, c. 514, s. 4 is a severability clause.

Session Laws 1993, c. 514, s. 5 provides that the Board's rule-making authority under the act is effective upon ratification of the act. The act was ratified July 24, 1993.

Effect of Amendments. — The 1993 amendment, effective July 1, 1994, substituted "licensed" for "registered".

CASE NOTES

Cited in State v. Newell, 82 N.C. App. 707, 348 S.E.2d 158 (1986).

§ 8-54. Defendant in criminal action competent but not compellable to testify.

CASE NOTES

I. General Consideration.
III. Cross-Examination of Defendant.
  B. Particular Areas of Inquiry.
IV. Defendant Not Testifying.
  B. Fact Commented On.

I. GENERAL CONSIDERATION.

Applied in State v. Billings, 104 N.C. App. 362, 409 S.E.2d 707 (1991).

Cited in State v. Holder, 331 N.C. 462, 418 S.E.2d 197 (1992); State v. Griffin, 109 N.C. App. 131, 425 S.E.2d 722 (1993).

III. CROSS-EXAMINATION OF DEFENDANT.

B. Particular Areas of Inquiry.

And Specific Acts of Misconduct, etc. —

By choosing to testify, a defendant is subject to cross-examination as other witnesses; defendant waived his privilege against self-incrimination regarding bad acts when he elected to testify. State v. Artis, 91 N.C. App. 604, 372 S.E.2d 905 (1988).

Where defendant testified on direct examination that he had no intent of selling cocaine until he was approached by the informant, he raised the issue of entrapment, and § 8C-1, Rule 404(b) allowed the State on cross-examination to question defendant concerning the prior sale to undercover police to prove absence of entrapment; therefore defendant's privilege against self-incrimination was not violated by the questions. State v. Artis, 91 N.C. App. 604, 372 S.E.2d 905 (1988).

Where defendant first testified that he had never possessed any cocaine, it was then proper impeachment for the district attorney to ask the defendant about bags containing cocaine residue found in the defendant's possession when he was arrested. State v. Wooten, 104 N.C. App. 125, 408 S.E.2d 202 (1991).

IV. DEFENDANT NOT TESTIFYING.

B. Fact Commented On.

Comment by Court. —

Any comment or explanation by the parties or the court on a defendant's election not to testify is improper. State v. Banks, 322 N.C. 753, 370 S.E.2d 398 (1988).

New Trial Ordered. — Defendant was entitled to a new trial because the trial court erroneously overruled his objection to the prosecution's closing comments about defendant's decision not to testify in trial for felonious breaking or entering; the error was prejudicial and required a new trial. State v. Reid, 334 N.C. 551, 434 S.E.2d 193 (1993).

Veiled Reference to Defendant's Failure to Testify. — Trial judge did not err in failing to intervene ex mero motu where any reference by the district attorney to defendant's failure to testify was at the most "a veiled reference," so brief and indirect as to make improbable any contention that the jury inferred guilt from the failure of the defendant to testify. State v. Styles, 93 N.C. App. 596, 379 S.E.2d 255 (1989).

Prosecutor's calling the jury's attention to defendant's demeanor made no reference to or inference about his decision not to testify, and did not violate his constitutional and statutory privilege not to testify. State v. Brown, 320 N.C. 179, 358 S.E.2d 1, cert. denied, 484 U.S. 970, 108 S. Ct. 467, 98 L. Ed. 2d 406 (1987).

Comment by Defense Counsel on Defendant's Failure to Testify. — Defense counsel was entitled to read to the jury that clause of U.S. Const., Amend. V material to his election not to testify, i.e., "No person … shall be compelled in any criminal case to be a witness against himself" and to say simply that because of this provision, the jury must not consider defendant's election not to testify adversely to him, or words to this effect. State v. Banks, 322 N.C. 753, 370 S.E.2d 398 (1988).

Comments Elicited by Defense Counsel. — Trial court did not err in allowing police officer's comments on murder defendant's decision to exercise her constitutional right to remain silent upon her arrest; the comments were elicited by the defense counsel and defense counsel repeatedly asked officer to explain his answers and did not object to, or move to strike the comments. State v. Jennings, 333 N.C. 579, 430 S.E.2d 188 (1993), cert. denied, — U.S. —, 114 S. Ct. 644, 126 L. Ed. 2d 602 (1994).

Prohibiting Defense from Reading U.S. Const., Amend. V to the Jury Held Not Reversible Error. — The trial court did not commit reversible error in prohibiting the reading to the jury of that portion of U.S. Const., Amend. V pertinent to the defendant's election not to testify, where in his general instructions to the jury, the judge gave an accurate and complete statement of the law applicable to defendant's election not to testify. State v. Banks, 322 N.C. 753, 370 S.E.2d 398 (1988).

Prosecution's statements directed at defendant's failure to produce rebuttal or alibi evidence at trial for robbery with dangerous weapon, were not directed at defendant's failure to testify on his own behalf; therefore, these comments were not in error. State v. Thompson, 110 N.C. App. 217, 429 S.E.2d 590 (1993).

§ 8-56. Husband and wife as witnesses in civil action.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Federal law and North Carolina law on spousal privilege are in sharp conflict. Walker v. Lewis, 127 F.R.D. 466 (W.D.N.C. 1989).

Applicability of Federal Privilege Law in Federal Case with Pendent State Claims. — In a federal question case with pendent state law claims, where the issue is discoverability of evidence which is relevant to federal and state law claims, any conflict between federal and state privilege law must be resolved in favor of the body of federal law favoring admission of the evidence. Walker v. Lewis, 127 F.R.D. 466 (W.D.N.C. 1989).

Severance of State Law Claims from Federal Case so as to Preserve State Privilege. — In a federal question case with pendent state law claims, where the issue is admissibility of evidence at trial which is relevant to a federal question and to a pendent state law claim, the court must apply federal privilege law. However, because of liberal discovery, the court and the parties can intelligently choose whether to give effect to state privilege law by severing the trial of the state law claims in federal court or dismissing the state law claims so that they can be tried in state court. Walker v. Lewis, 127 F.R.D. 466 (W.D.N.C. 1989).

§ 8-57. Husband and wife as witnesses in criminal actions.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 843, s. 6 initially provided that the act, which amended subsection (b), would become effective October 1, 1986, and expire October 1, 1988, but that the expiration date would not affect the term or authority of a grand jury constituted at that time. Session Laws 1987 (Reg. Sess., 1988), c. 1040, s. 1, as amended by Session Laws 1989 (Reg. Sess., 1990), c. 1039, s. 4, extended the expiration date of Session Laws 1985 (Reg. Sess., 1986), c. 843, s. 6, to October 1, 1993. Subsequently, Session Laws 1991, c. 686, s. 3, amended Session Laws 1985, c. 843, s. 6, as amended by Session Laws 1987, c. 1040, so as to delete the October 1, 1991 expiration provision. However, the 1991 amendment, which was in the coded bill drafting format set out at G.S. 120-20.1, did not mention or take account of Session Laws 1989 (Reg. Sess., 1990), c. 1039, s. 4.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Evidence rendered incompetent by this section is excludable and failure to do so is reversible error. State v. Holmes, 101 N.C. App. 229, 398 S.E.2d 873 (1990), aff'd, 330 N.C. 826, 412 S.E.2d 660 (1992).

Privilege Belongs to Spouse. — Under subsection (b) of this section, the privilege belongs to the spouse, not to the defendant. Once challenged, the better practice is for the trial judge to advise the spouse that he or she cannot be compelled to testify in cases where this statute applies, and then to determine whether the spouse is in fact still willing to testify. State v. Britt, 320 N.C. 705, 360 S.E.2d 660 (1987).

This section preserves the rule against disclosure of confidential communications. While this section modifies the rule against adverse spousal testimony, it preserves the rule against disclosure of confidential marital communications. State v. Holmes, 330 N.C. 826, 412 S.E.2d 660 (1992).

A confidential communication between husband and wife is privileged and that this privilege, even in criminal cases, survives both the North Carolina Rules of Evidence and the 1983 amendment to this section. The statute makes it clear that neither spouse may be compelled to disclose confidential communications between husband and wife when testifying as a witness. State v. Holmes, 330 N.C. 826, 412 S.E.2d 660 (1992).

Defendant who asked third parties to leave before he spoke to his wife in their home had the right to assert privilege against his wife and prohibit her from testifying both about his statements to her and about his actions in taking a gun out of a kitchen cabinet. State v. Holmes, 101 N.C. App. 229, 398 S.E.2d 873 (1990), aff'd, 330 N.C. 826, 412 S.E.2d 660 (1992).

Prejudicial Error Not Shown. — Assuming, arguendo, that defendant's wife was compelled to testify against defendant, the error was not prejudicial, where she essentially corroborated other witnesses' testimony, and there was not a reasonable possibility that a different result would have been reached had she not testified. State v. Britt, 320 N.C. 705, 360 S.E.2d 660 (1987).

Admission Not Marital Communication. — Defendant's admission to his wife that he had sexual intercourse with his stepdaughter was not a marital communication induced by the marital relationship and prompted by the affection, confidence, and loyalty engendered by such relationship; rather, defendant's confession was driven by his own psychological motivations and was not a marital communication. State v. Smith, 113 N.C. App. 827, 440 S.E.2d 322 (1994).

Applied in State v. Josey, 328 N.C. 697, 403 S.E.2d 479 (1991); State v. Martin, 105 N.C. App. 182, 412 S.E.2d 134 (1992).

§ 8-57.1. Husband-wife privilege waived in child abuse.

Legal Periodicals. —

For note, "Family Law—Lovers' Triangle Turns Bermuda Triangle: The Natural Father's Right to Rebut the Marital Presumption—Michael H. v. Gerald D.," see 25 Wake Forest L. Rev. 617 (1990).

ARTICLE 8.

Attendance of Witness.

§ 8-59. Issue and service of subpoena.

In obtaining the testimony of witnesses in causes pending in the trial divisions of the General Court of Justice, subpoenas shall be issued and served in the manner provided in Rule 45 of the Rules of Civil Procedure for civil actions. Provided that in criminal cases any employee of a local law-enforcement agency may effect service of a subpoena for the attendance of witnesses by telephone communication with the person named. However, in the case of a witness served by telephone communication pursuant to this section, neither an order to show cause nor an order for arrest shall be issued until such person has been served personally with the written subpoena. (1777, c. 115, s. 36, P.R.; R.C., c. 31, s. 59; Code, s. 1355; Rev., s. 1639; C.S., s. 1803; 1959, c. 522, s. 2; 1967, c. 954, s. 3; 1971, c. 381, s. 5; 1981, c. 267; 1989, c. 262, s. 2.)

Effect of Amendments. — The 1989 amendment, effective October 1, 1989, substituted "any employee of a local law-enforcement agency" for "any law-enforcement officer authorized to make arrests and employed by a local law-enforcement agency" in the second sentence.

ARTICLE 10.

Depositions.

§ 8-83. When deposition may be read on the trial.

Every deposition taken and returned in the manner provided by law may be read on the trial of the action or proceeding, or before any referee, in the following cases, and not otherwise:

(1) If the witness is dead, or has become insane since the deposition was taken.

(2) If the witness is a resident of a foreign country, or of another state, and is not present at the trial.

(3) If the witness is confined in a prison outside the county in which the trial takes place.

(4) If the witness is so old, sick or infirm as to be unable to attend court.

(5) If the witness is the President of the United States, or the head of any department of the federal government, or a judge, district attorney, or clerk of any court of the United States, and the trial shall take place during the term of such court.

(6) If the witness is the Governor of the State, or the head of any department of the State government, or the president of the University, or the head of any other incorporated college in the State, or the superintendent or any physician in the employ of any of the hospitals for the insane for the State.

(7) If the witness is a justice of the Supreme Court, judge of the Court of Appeals, or a judge, presiding officer, clerk or

district attorney of any court of record, and the trial shall take place during the term of such court.

(8) If the witness is a member of the Congress of the United States, or a member of the General Assembly, and the trial shall take place during a time that such member is in the service of that body.

(9) Except in actions or proceedings governed by the Rules of Civil Procedure, if the witness has been duly summoned, and at the time of the trial is out of the State, or is more than seventy-five miles by the usual public mode of travel from the place where the court is sitting, without the procurement or consent of the party offering his deposition.

(10) If the action is pending in a magistrate's court the deposition may be read on the trial of the action, provided the witness is more than 75 miles by the usual public mode of travel from the place where the court is sitting.

(11) Except in actions or proceedings governed by the Rules of Civil Procedure, if the witness is a physician duly licensed to practice medicine in the State of North Carolina, and resides or maintains his office outside the county in which the action is pending.

If any provision of this section conflicts with the Rules of Civil Procedure, then those Rules shall control in actions or proceedings governed by them. (1777, c. 115, ss. 39, 40, 41, P.R.; 1803, c. 633, P.R.; 1828, ch. 24, ss. 1, 2; 1836, c. 30; R.C., c. 31, s. 63; 1869-70, c. 227, s. 11; 1881, c. 279, ss. 1, 3; Code, s. 1358; 1905, c. 366; Rev., s. 1645; 1919, c. 324; C.S., s. 1821; 1965, c. 675; 1969, c. 44, s. 23; 1971, c. 381, s. 7; 1973, c. 47, s. 2; 1991, c. 491, s. 1.)

Cross References. — For the Rules of Civil Procedure, see § 1A-1.

Effect of Amendments. — The 1991 amendment, effective July 2, 1991, substituted "time that such member is in the service of that body" for "session of the body of which he is a member" in subdivision (8); inserted "Except in actions or proceedings governed by the Rules of Civil Procedure" at the beginning of subdivisions (9) and (11); and added the last sentence.

ARTICLE 13.

Photographs.

§ 8-97. Photographs as substantive or illustrative evidence.

CASE NOTES

Limiting Instruction. — It would seem to be the better practice for a party wishing to limit the use of evidence offered by his opponent to request a limiting instruction at the time of its admission. State v. Kuplen, 316 N.C. 387, 343 S.E.2d 793 (1986); State v. Alston, 91 N.C. App. 707, 373 S.E.2d 306 (1988).

Where many if not all of the photographs which were received into evidence could properly have been considered by the jury as substantive evidence, for the trial judge to give a proper instruction limiting the State's exhibits to illustrative use would have required that the defendant specifically identify those exhibits which he contended were subject only to illustrative use. State v. Kuplen, 316 N.C. 387, 343 S.E.2d 793 (1986).

Defendant in robbery case argued that the judge erred in allowing the jury to view a videotape without first instructing them that it was admissible solely for the purpose of illustrating the victim's testimony; however, defendant did not request a limiting instruction, and since the State laid a proper foundation to introduce the videotape for either substantive or illustrative purposes, no limiting instruction was necessary. State v. Cannon, 92 N.C. App. 246, 374 S.E.2d 604 (1988), rev'd on other grounds, 326 N.C. 27, 387 S.E.2d 450 (1990).

Admissibility of Videotape Recordings. — The basic principles governing the admissibility of photographs apply also to motion pictures. Videotape recordings may be admitted into evidence where they are relevant and have been properly authenticated. State v. Billings, 104 N.C. App. 362, 409 S.E.2d 707 (1991).

Videotapes generally are admissible into evidence under North Carolina law for both illustrative and substantive purposes. Campbell ex rel. McMillan v. Pitt County Mem. Hosp., 84 N.C. App. 314, 352 S.E.2d 902, aff'd, 321 N.C. 260, 362 S.E.2d 273 (1987), overruled on other grounds, Johnson v. Ruark Obstetrics & Assoc., 327 N.C. 283, 395 S.E.2d 85, rehearing denied, 327 N.C. 644, 399 S.E.2d 133 (1990).

Within Discretion of Court. — A "day in the life" videotape of child allegedly injured by negligence of defendant hospital at the time of her birth was properly admitted. The plaintiffs' failure to provide notice to the opposing counsel and the trial court prior to taping did not render the tape inadmissible; rather, the admissibility of the videotape under the particular facts and circumstances of the action lay solely within the sound discretion of the trial court. Campbell ex rel. McMillan v. Pitt County Mem. Hosp., 84 N.C. App. 314, 352 S.E.2d 902, aff'd, 321 N.C. 260, 362 S.E.2d 273 (1987).

Preview of Videotape. — Where a videotape depicts conduct of a defendant in a criminal case, the trial judge should grant a request from the defense to preview the tape. State v. Billings, 104 N.C. App. 362, 409 S.E.2d 707 (1991).

Incriminating Statements in Videotape. — If a videotape contains incriminating statements by the defendant, upon his objection, the judge must conduct a voir dire to determine the admissibility of any in-custody statements or admissions in the tape. State v. Billings, 104 N.C. App. 362, 409 S.E.2d 707 (1991).

For discussion of admissibility of maps, surveys and the like, see Presley v. Griggs, 88 N.C. App. 226, 362 S.E.2d 830 (1987).

Proper Authentication of Photographs. — Where the witness clearly indicated that the photographs accurately portrayed what he had observed, the photographs were properly authenticated for illustrative purposes. State v. Alston, 91 N.C. App. 707, 373 S.E.2d 306 (1988).

Foundation Held Sufficient. — Where victim testified that the videotape was a factual representation of the events on the night of the robbery, the business had installed the camera approximately six weeks before the robbery, and that the camera was working properly before and after the night of the robbery, and on voir dire a police department detective testified that he had exclusive care and custody of the video camera film since the night of the robbery, there was sufficient evidence for the trial judge to find that the State had laid a proper foundation to introduce the videotape into evidence for either substantive or illustrative purposes. State v. Cannon, 92 N.C. App. 246, 374 S.E.2d 604 (1988), rev'd on other grounds, 326 N.C. 37, 387 S.E.2d 450 (1990).

Admission of Photographs Held Proper. — Trial court's admission of nine photographs of victims' bodies was not error despite defendant's argument that photographs were repetitive and their relevancy was outweighed by their potential to inflame passions of the jury, since each autopsy photograph showed a different wound, and the photographs were not gory or gruesome. State v. Rogers, 323 N.C. 658, 374 S.E.2d 852 (1989).

Photographs of a hole which caused injury to a moped rider were properly admitted into evidence even though they were taken five months after the accident; there was no evidence in the record suggesting that conditions had changed between the time of the accident and the time the photographs were taken. Sellers v. CSX Transp., Inc, 102 N.C. App. 563, 402 S.E.2d 872 (1991).

Quoted in City of Statesville v. Cloaninger, 106 N.C. App. 10, 415 S.E.2d 111 (1992).

Chapter 8C.

Evidence Code.

Article 4.

Relevancy and Its Limits.

Rule
404. Character evidence not admissible to prove conduct; exceptions; other crimes.

§ 8C-1. Rules of Evidence.

ARTICLE 1.

General Provisions.

Rule 103. Rulings on evidence.

CASE NOTES

Where a relevant response was not apparent from the context of the examination defendant was precluded from predicating error upon the trial court's ruling on the State's objection to the question. State v. Robinson, 336 N.C. 78, 443 S.E.2d 306 (1994).

Waiver of Objection. —

Defendant waived any objection as to use of a witnesses' prior statements by using them extensively himself on cross-examination, and by failing to object to the use of the statements to refresh the witnesses' memory. State v. Demery, 113 N.C. App. 58, 437 S.E.2d 704 (1993).

By failing to preserve evidence, etc. —

Where the defendant made no offer of proof regarding his proffered testimony and the significance of the excluded testimony was not obvious from the record, the defendant failed to preserve any issue concerning the exclusion of the testimony for appellate review. State v. Barton, 335 N.C. 741, 441 S.E.2d 306 (1994).

Applied in State v. Baker, 106 N.C. App. 687, 418 S.E.2d 288 (1992); State v. Long, 113 N.C. App. 765, 440 S.E.2d 576 (1994).

Quoted in State v. Najewicz, 112 N.C. App. 280, 436 S.E.2d 132 (1993).

Stated in Powell v. Omli, 110 N.C. App. 336, 429 S.E.2d 774 (1993).

Cited in State v. Robinson, 336 N.C. 78, 443 S.E.2d 306 (1994).

Rule 104. Preliminary questions.

CASE NOTES

Declarant's Conflicting Statements. — Where the hearsay statements of a declarant are conflicting the conflict creates a question of credibility and not one of reliability. Questions of credibility are to be determined by the jury. State v. Jolly, 332 N.C. 351, 420 S.E.2d 661 (1992).

Cited in State v. Wilson, 108 N.C. App. 117, 423 S.E.2d 473 (1992); State v. Wiggins, 334 N.C. 18, 431 S.E.2d 755 (1993); State v. Brown, 335 N.C. 477, 439 S.E.2d 589 (1994).

Rule 105. Limited admissibility.

CASE NOTES

Cited in State v. Wilson, 108 N.C. App. 117, 423 S.E.2d 473 (1992).

Rule 106. Remainder of or related writings or recorded statements.

CASE NOTES

The Supreme Court frequently looks to federal decisions for guidance with regard to the Rules of Evidence, and the lessons of the federal decisions discussing Rule 106 are well settled. Rule 106 codifies the standard common law rule that when a writing or recorded statement or a part thereof is introduced by any party, an adverse party can obtain admission of the entire statement or anything so closely related that in fairness it too should be admitted. State v. Thompson, 332 N.C. 204, 420 S.E.2d 395 (1992).

Requirements. — Federal decisions make clear that Rule 106 does not require introduction of additional portions of the statement or another statement that are neither explanatory of nor relevant to the passages that have been admitted. State v. Thompson, 332 N.C. 204, 420 S.E.2d 395 (1992).

ARTICLE 2.

Judicial Notice.

Rule 201. Judicial notice of adjudicative facts.

CASE NOTES

Sunset and Moon Phase. — The trial court was not required to take judicial notice of the time of the sunset and the phase of the moon as reported in a local newspaper. State v. Canady, 110 N.C. App. 763, 431 S.E.2d 500 (1993).

Cited in Albritton v. Albritton, 109 N.C. App. 36, 426 S.E.2d 80 (1993).

ARTICLE 4.

Relevancy and Its Limits.

Rule 401. Definition of "relevant evidence."

CASE NOTES

I. General Consideration.
II. Relevant Evidence.

I. GENERAL CONSIDERATION.

The court has interpreted this rule broadly and has explained on a number of occasions that in a criminal case every circumstance calculated to throw any light upon the supposed crime is admissible and permissible. State v. Collins, 335 N.C. 729, 440 S.E.2d 559 (1994).

Applied in State v. Hightower, 331

N.C. 636, 417 S.E.2d 237 (1992); Workman v. Workman, 106 N.C. App. 562, 418 S.E.2d 269 (1992); In re Beck, 109 N.C. App. 539, 428 S.E.2d 232 (1993); State v. Withers, 111 N.C. App. 340, 432 S.E.2d 692 (1993); State v. Moore, 335 N.C. 567, 440 S.E.2d 797 (1994).

Quoted in State v. Mebane, 106 N.C. App. 516, 418 S.E.2d 245 (1992); State v. Baker, 333 N.C. 325, 426 S.E.2d 73 (1993); State v. Beach, 333 N.C. 733, 430 S.E.2d 248 (1993); State v. Wilson, 335 N.C. 220, 436 S.E.2d 831 (1993); State v. Brooks, 113 N.C. App. 451, 439 S.E.2d 234 (1994).

Cited in State v. Hucks, 332 N.C. 650, 422 S.E.2d 711 (1992); State v. Quick, 106 N.C. App. 548, 418 S.E.2d 291 (1992); State v. Taylor, 332 N.C. 372, 420 S.E.2d 414 (1992); State v. Moore, 107 N.C. App. 388, 420 S.E.2d 691 (1992); State v. Wilson, 108 N.C. App. 117, 423 S.E.2d 473 (1992); State v. Holmes, 109 N.C. App. 615, 428 S.E.2d 277 (1993); State v. Roddey, 110 N.C. App. 810, 431 S.E.2d 245 (1993); State v. Bynum, 111 N.C. App. 845, 433 S.E.2d 778 (1993); Abels v. Renfro Corp., 335 N.C. 209, 436 S.E.2d 822 (1993); State v. Sierra, 335 N.C. 753, 440 S.E.2d 791 (1994); Kapp v. Kapp, 336 N.C. 295, 442 S.E.2d 499 (1994); Dennis v. Duke Power Co., 114 N.C. App. 272, 442 S.E.2d 104 (1994); In re Will of Jones, 114 N.C. App. 782, 443 S.E.2d 363 (1994).

II. RELEVANT EVIDENCE.

Amount of Damages in Personal Injury Action. — Where the determination to be made in a personal injuries action was the amount of damages, any fact bearing on the degree or severity of injury sustained by plaintiff was properly admitted. Ferrell v. Frye, 108 N.C. App. 521, 424 S.E.2d 197 (1993).

Although defendant pled guilty, videotape showing murder was admissible as it showed that the murder was committed for pecuniary gain and that the murder was part of a course of conduct which included a crime of violence against another person. State v. Jones, 336 N.C. 229, 443 S.E.2d 48 (1994).

Evidence Pertaining to Parental Relations of Decedent in Wrongful Death Action. — Evidence pertaining to disease of plaintiff's decedent and the effect it had on his relationship with his parents had a tendency to prove the extent of damages, which were in controversy in wrongful death action. The evidence was therefore relevant and should have been admitted on that ground. Hales v. Thompson, 111 N.C. App. 350, 432 S.E.2d 388 (1993).

Evidence Held Relevant. —

Photographs which showed numerous gunshot wounds were relevant to show not only the cause of death, but were also relevant as a means of proving the premeditation and deliberation elements of first-degree murder. State v. Brown, 335 N.C. 477, 440 S.E.2d 98 (1994).

Where defense counsel attacked the professionalism of the conduct of the law enforcement officers who investigated the case, the evidence that defendant was read his Miranda rights according to law and that he indicated his understanding of them tended to refute the characterization of the officers' conduct as unprofessional and was therefore relevant. State v. Carter, 335 N.C. 422, 440 S.E.2d 268 (1994).

Evidence which tended to show that the defendant did not support his children and did not send them gifts following his wife's death tended to shed light upon the circumstances surrounding the shooting and tended to rebut the defendant's characterization of his relationship with his wife and children as a caring, supportive one and was thus relevant and admissible. State v. Collins, 335 N.C. 729, 440 S.E.2d 559 (1994).

Testimony Which Opens the Door to Otherwise Inadmissible Evidence. — When defendant testified that he loved his wife and did not intend to kill her, the door was opened to questions by the State as to matters which would show the defendant did not love his wife, as evidenced by his affairs with other women. State v. Norman, 331 N.C. 738, 417 S.E.2d 233 (1992).

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

CASE NOTES

Probative Value Outweighed by Prejudicial Potential. — Where officer saw two small bottles of liquor in a purse but had no reason to believe that alcohol consumption contributed to car accident the probative value of this evidence was outweighed by its prejudicial potential. Browning v. Carolina Power & Light Co., 114 N.C. App. 229, 441 S.E.2d 607 (1994).

In order to establish the relevancy of blood test results, plaintiff is required to lay a foundation by way of expert testimony explaining the way the test is conducted, attesting its scientific reliability, and vouching for its correct administration in this particular case. Further, the substance analyzed must be accurately identified by proving a chain of custody to insure that the substance came from the source claimed and that its condition was unchanged. Lombroia v. Peek, 107 N.C. App. 745, 421 S.E.2d 784 (1992).

Psychiatric Testimony About Ability to Form Specific Intent in Murder Trial. — Testimony of a psychiatric expert that in his opinion the defendant was suffering from organic brain impairment, that the defendant's capacity to plan, think or reflect was impaired at the time of the shootings, and that the defendant was incapable of forming the specific intent to kill at the time of the shootings was evidence tending to show that the defendant acted without premeditation or deliberation when he murdered victim and that he was incapable of forming the specific intent to kill when he shot his stepson and was therefore relevant in the defendant's trial for first-degree murder and assault with a deadly weapon with intent to kill inflicting serious injury. State v. Daniel, 333 N.C. 756, 429 S.E.2d 724 (1993).

Evidence Held Relevant. —

Plaintiffs failed to make a timely objection to the admission of a report prepared by financial consultant, which was listed by defendant in the "order on final pre-trial conference," thus affording plaintiffs ample time to prepare for a timely objection to the introduction of the exhibit at trial. Furthermore, the report was relevant since it tended to show the interconnected operations of the parties, the inadequacies of the financial record keeping, and the degree of control that plaintiffs exercised over one party. Powell v. Omli, 110 N.C. App. 336, 429 S.E.2d 774, cert. denied, 334 N.C. 621, 435 S.E.2d 338 (1993).

Evidence Held Irrelevant. —

Trial judge did not abuse his discretion by refusing to admit the testimony of detective that a violation of § 47C-4-110, for failure to put money in escrow, is not subject to criminal sanctions. State v. Rupe, 109 N.C. App. 601, 428 S.E.2d 480 (1993).

Where plaintiff in paternity case did not contend that an operation which could produce the effects of recanalization was performed on defendant who had vasectomy, nor was there any evidence that such an operation was performed, the testimony on the procedure was irrelevant. Brooks v. Hayes, 113 N.C. App. 168, 438 S.E.2d 420 (1993).

Photographs of witness used to corroborate her allegations that defendant used the photographs to blackmail her to prevent her from testifying were admissible, but it was error to admit other photographs into evidence, not used for any purpose during the trial. State v. Cummings, 113 N.C. App. 368, 438 S.E.2d 453 (1994).

Testimony Which Opens the Door to Otherwise Inadmissible Evidence. — When defendant testified that he loved his wife and did not intend to kill her, the door was opened to questions by the State as to matters which would show the defendant did not love his wife, as evidenced by his affairs with other women. State v. Norman, 331 N.C. 738, 417 S.E.2d 233 (1992).

Applied in State v. Withers, 111 N.C. App. 340, 432 S.E.2d 692 (1993); State v. Moore, 335 N.C. 567, 440 S.E.2d 797 (1994).

Quoted in State v. Hightower, 331 N.C. 636, 417 S.E.2d 237 (1992).

Stated in State v. Mebane, 106 N.C. App. 516, 418 S.E.2d 245 (1992); State v. Quick, 106 N.C. App. 548, 418 S.E.2d 291 (1992); State v. Wilson, 335 N.C. 220, 436 S.E.2d 831 (1993).

Cited in State v. Moore, 107 N.C. App. 388, 420 S.E.2d 691 (1992); State v. Collins, 335 N.C. 729, 440 S.E.2d 559

(1994); Kapp v. Kapp, 336 N.C. 295, 442 S.E.2d 499 (1994).

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

CASE NOTES

I. General Consideration.
II. Photographs and Videotapes.
III. Prejudicial Evidence, Evidence Excluded Based on Confusion, Etc.
IV. Admission or Exclusion of Evidence Not Prejudicial.

I. GENERAL CONSIDERATION.

Factors to Consider in Determining Admissibility. — Although no definitive test for the admissibility of photographs alleged to be inflammatory and unduly prejudicial has been developed, factors that courts have looked to in the past include: (1) the number of the photographs; (2) whether the photographs were unnecessarily duplicative of other testimony; (3) whether the purpose of the photographs was aimed solely at arousing the passions of the jury; and (4) the circumstances surrounding the presentation of the photographs. State v. Brown, 335 N.C. 477, 440 S.E.2d 98 (1994).

Clearly False Statement. — The admission of a statement that is so clearly false and that is made by a witness who is unavailable to testify or be cross-examined would be misleading to a jury. State v. Brown, 335 N.C. 477, 439 S.E.2d 589 (1994).

Applied in State v. Phipps, 331 N.C. 427, 418 S.E.2d 178 (1992); State v. Davis, 106 N.C. App. 596, 418 S.E.2d 263 (1992); State v. White, 331 N.C. 604, 419 S.E.2d 557 (1992); Borg-Warner Acceptance Corp. v. Johnston, 107 N.C. App. 174, 419 S.E.2d 195 (1992); State v. Cummings, 332 N.C. 487, 422 S.E.2d 692 (1992); State v. Daniel, 333 N.C. 756, 429 S.E.2d 724 (1993); State v. Webster, 111 N.C. App. 72, 431 S.E.2d 808 (1993); State v. Withers, 111 N.C. App. 340, 432 S.E.2d 692 (1993); State v. Morgan, 111 N.C. App. 662, 432 S.E.2d 877 (1993); State v. Yelverton, 334 N.C. 532, 434 S.E.2d 183 (1993); State v. McHone, 334 N.C. 627, 435 S.E.2d 296 (1993); State v. Moore, 335 N.C. 567, 440 S.E.2d 797 (1994).

Quoted in State v. Cummings, 113 N.C. App. 368, 438 S.E.2d 453 (1994).

Cited in State v. Handy, 331 N.C. 515, 419 S.E.2d 545 (1992); State v. Stallings, 107 N.C. App. 241, 419 S.E.2d 586 (1992); State v. Taylor, 332 N.C. 372, 420 S.E.2d 414 (1992); State v. Moore, 107 N.C. App. 388, 420 S.E.2d 691 (1992); State v. Wilson, 108 N.C. App. 117, 423 S.E.2d 473 (1992); State v. Syriani, 333 N.C. 350, 428 S.E.2d 118 (1993); State v. Rupe, 109 N.C. App. 601, 428 S.E.2d 480 (1993); State v. Mixion, 110 N.C. App. 138, 429 S.E.2d 363 (1993); State v. Rannels, 333 N.C. 644, 430 S.E.2d 254 (1993); State v. Matheson, 110 N.C. App. 577, 430 S.E.2d 429 (1993); Hales v. Thompson, 111 N.C. App. 350, 432 S.E.2d 388 (1993); State v. Black, 111 N.C. App. 284, 432 S.E.2d 710 (1993); State v. Bynum, 111 N.C. App. 845, 433 S.E.2d 778 (1993).

II. PHOTOGRAPHS AND VIDEOTAPES.

Photographs Held Relevant. — Color autopsy photographs, although gruesome, were relevant to illustrate the testimony of the pathologist and were illustrative of testimony regarding the number and nature of the victim's wounds and were therefore admissible. State v. Rose, 335 N.C. 301, 439 S.E.2d 518 (1994).

Photographs which showed numerous gunshot wounds were relevant to show not only the cause of death, but were also relevant as a means of proving the premeditation and deliberation elements of first-degree murder. State v. Brown, 335 N.C. 477, 440 S.E.2d 98 (1994).

Photographs Held Properly Admitted. —

Defendant failed to show that the trial court abused its discretion in denying his motion to exclude gun and photograph of gun from evidence. State v. Thompson, 332 N.C. 204, 420 S.E.2d 395 (1992).

Where photographs of a homicide victim's body were not excessive in number and were used solely for the purpose of illustrating a medical examiner's testimony, the trial court did not err in admitting them into evidence. State v. Mahaley, 332 N.C. 583, 423 S.E.2d 58 (1992).

Photograph of rape victim was properly admitted for the limited purpose of illustrating witness medical examiner's testimony as to cause of death. State v. McCollum, 334 N.C. 208, 433 S.E.2d 144 (1993).

III. PREJUDICIAL EVIDENCE, EVIDENCE EXCLUDED BASED ON CONFUSION, ETC.

Evidence Properly Excluded. —

Because the document was remote in time, failed to specify to whom the document was referring, and failed to show a definite susceptibility of propounder to influence testatrix, its probative value was substantially outweighed by its danger of prejudice, and the trial court properly exercised its discretion in excluding the evidence. In re Will of Prince, 109 N.C. App. 58, 425 S.E.2d 711 (1993).

Where officer saw two small bottles of liquor in a purse but had no reason to believe that alcohol consumption contributed to car accident, the probative value of this evidence was outweighed by its prejudicial potential. Browning v. Carolina Power & Light Co., 114 N.C. App. 229, 441 S.E.2d 607 (1994).

Evidence Held Prejudicial. —

Where counsel for the defendant asked over 60 questions referencing an action arising out of events occurring some 12 to 14 years earlier and these inquiries related to an extremely remote event, they were minimally probative when compared to their prejudicial effect, and were therefore proscribed by this rule; further, the continued repetitive questioning reflected the harassment and "needless consumption of time" that Rule 611(a) prohibits. Weston v. Daniels, 114 N.C. App. 418, 442 S.E.2d 69 (1994).

IV. ADMISSION OR EXCLUSION OF EVIDENCE NOT PREJUDICIAL.

Cumulative Character Evidence. —

Where the trial court, by sustaining the prosecutor's objection to a question, did nothing more than exclude cumulative evidence, the trial court's action did not constitute error. State v. Barton, 335 N.C. 696, 441 S.E.2d 295 (1994).

Admission of Improper Evidence Not Prejudicial. —

In view of the entire body and weight of relevant evidence presented by the State against defendant, and the utter irrelevance of a prior sex act to the charges on which defendant was ultimately convicted, the erroneous admission of a statement concerning the sex act did not constitute prejudicial error. State v. Gibson, 333 N.C. 29, 424 S.E.2d 95 (1992), overruled on other grounds, 334 N.C. 402, 432 S.E.2d 353 (1993).

Evidence Properly Admitted. —

Tape recorded statements regarding defendant's prior crimes including a statement from defendant's own mouth that he had killed various people by sundry methods of his own volition in the past were sufficiently similar and not so remote as to run afoul of the balancing test between probative value and prejudicial effect set out in this rule. State v. Gibson, 333 N.C. 29, 424 S.E.2d 95 (1992).

In capital murder trial, trial court did not err by permitting the jury to listen to an audio tape recording of the defendant's telephone conversation with county sheriff because the tape recording was extremely probative. During the conversation, the defendant discussed problems he had experienced with his stepson, whom he shot, the defendant admitted the shooting of his stepson and the "other fellow" and stated that he told the "other guy" that he would "blow (them) away" if "the law comes out here." State v. Daniel, 333 N.C. 756, 429 S.E.2d 724 (1993).

Trial court's admission of the testimony of kidnapping victim regarding a prior incident during which defendant struck the murder victim in the back of the head with a pole and threatened to cut her throat with a butcher knife was upheld. State v. Kyle, 333 N.C. 687, 430 S.E.2d 412 (1993).

No error in the trial judge's discretionary ruling allowing the introduction of a note indicating that the victim was scared of defendant because he had threatened to kill her with a gun earlier that evening into evidence at defendant's first-degree murder trial. State v.

Shoemaker, 334 N.C. 252, 432 S.E.2d 314 (1993).

The trial court did not err in admitting evidence that defendant had previously sexually assaulted another daughter pursuant to Rule 404(b) and this rule. State v. Jacob, 113 N.C. App. 605, 439 S.E.2d 812 (1994).

Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.

(a) Character evidence generally. — Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of accused. — Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) Character of victim. — Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witness. — Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts. — Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident. Admissible evidence may include evidence of an offense committed by a juvenile if it would have been a Class A, B, C, D, or E felony if committed by an adult. (1983, c. 701, s. 1; 1994, Ex. Sess., c. 7, s. 3.)

Effect of Amendments. — The 1994 Extra Session amendment, effective May 1, 1994, and applicable to trials begun on or after that date, added the last sentence of subsection (b).

Legal Periodicals. —

For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

CASE NOTES

I. General Consideration.
II. Character Evidence Generally.
III. Other Crimes and Wrongs.
IV. Illustrative Cases.

I. GENERAL CONSIDERATION.

It was error for a trial judge not to conduct a voir dire in order to rule on questions of admissibility and order a tape recording to be edited or redacted as necessary. State v. Gibson, 333 N.C. 29, 424 S.E.2d 95 (1992), overruled on other grounds, 334 N.C. 402, 432 S.E.2d 353 (1993).

Applied in State v. White, 331 N.C. 604, 419 S.E.2d 557 (1992); State v. Cummings, 332 N.C. 487, 422 S.E.2d 692 (1992); State v. Harding, 110 N.C. App. 155, 429 S.E.2d 416 (1993); State v. Jennings, 333 N.C. 579, 430 S.E.2d 188 (1993); State v. McKinney, 110 N.C. App. 365, 430 S.E.2d 300 (1993); State v. Morgan, 111 N.C. App. 662, 432 S.E.2d 877 (1993); State v. Bynum, 111 N.C.

App. 845, 433 S.E.2d 778 (1993); State v. Everette, 111 N.C. App. 775, 433 S.E.2d 802 (1993); State v. Yelverton, 334 N.C. 532, 434 S.E.2d 183 (1993).

Quoted in State v. Holmes, 109 N.C. App. 615, 428 S.E.2d 277 (1993).

Cited in State v. Handy, 331 N.C. 515, 419 S.E.2d 545 (1992); State v. Hunter, 107 N.C. App. 402, 420 S.E.2d 700 (1992); State v. Gibson, 333 N.C. 29, 424 S.E.2d 95 (1992); State v. Baymon, 108 N.C. App. 476, 424 S.E.2d 141 (1993); State v. Mixion, 110 N.C. App. 138, 429 S.E.2d 363 (1993); State v. Davis, 110 N.C. App. 272, 429 S.E.2d 403 (1993); State v. Matheson, 110 N.C. App. 577, 430 S.E.2d 429 (1993); State v. Harris, 111 N.C. App. 445, 432 S.E.2d 415 (1993).

II. CHARACTER EVIDENCE GENERALLY.

Military Record or Military Service. — A good military record or military service is not relevant to defendant's guilt or innocence in a rape case. State v. Mustafa, 113 N.C. App. 240, 437 S.E.2d 906 (1994).

Witness' Beliefs About Defendant Not Evidence of Pertinent Trait. — Defense question to rape defendant's employment supervisor of whether he believed defendant was capable of raping anyone was not allowed as evidence of a pertinent character trait under subdivision (a)(1) of this rule. State v. Najewicz, 112 N.C. App. 280, 436 S.E.2d 132 (1993), cert. denied, 335 N.C. 362, 441 S.E.2d 130 (1994).

Evidence Showed More than Character. — In a first-degree murder case, evidence of defendant's having been charged with driving while impaired explained circumstances under which he was taken into custody, and evidence of defendant's refusal to take a breathalyzer test explained the circumstances under which defendant was kept waiting in the Virginia Public Safety Center where he confessed to the crimes for which he was on trial; all of this evidence tended ultimately to show the circumstances under which that confession was made and was thus relevant on the issues of the confession's voluntariness and credibility. The evidence cast more light on these important questions than it did on defendant's character; therefore, its probative value outweighed its prejudicial effect. State v. Rannels, 333 N.C. 644, 430 S.E.2d 254 (1993).

Admission of Evidence Prejudicial Error. — There was no relevancy for the admission of defendant's past violent behavior toward his wife to prove the character of the defendant in relation to motive, opportunity, or intent and the admission of the evidence constituted prejudicial error requiring a new trial. State v. Brooks, 113 N.C. App. 451, 439 S.E.2d 234 (1994).

III. OTHER CRIMES AND WRONGS.

A prior act or crime is "similar" if there are some unusual facts present indicating that the same person committed both the earlier offense and the present one. However, the similarities between the two incidents need not be "unique and bizarre." State v. Sneeden, 108 N.C. App. 506, 424 S.E.2d 449 (1993).

This rule includes no requisite that the evidence tending to prove defendant's identity as the perpetrator of another crime be direct evidence exclusively. State v. Moore, 335 N.C. 567, 440 S.E.2d 797 (1994).

Prior Acts Showing Motive or Conduct. —

Trial court's admission of the testimony of kidnapping victim regarding a prior incident during which defendant struck the murder victim in the back of the head with a pole and threatened to cut her throat with a butcher knife was upheld under section (b) of this Rule and under § 8C-1, Rule 403. State v. Kyle, 333 N.C. 687, 430 S.E.2d 412 (1993).

Evidence about drug sales by defendant and his friends on the night of the murder was relevant to show the motive for the shooting and to put the crime in context. Thus, the testimony was admissible under section (b) and the trial court did not err in admitting it. State v. Cook, 334 N.C. 564, 433 S.E.2d 730 (1993).

Evidence of prior sex acts, etc. —

North Carolina liberally admits evidence of prior similar sex offenses; this is particularly true where the fact sought to be proved is the defendant's intent to commit a similar sexual offense for which the defendant has been charged. State v. Sneeden, 108 N.C. App. 506, 424 S.E.2d 449 (1993).

The trial court did not err in admitting evidence that defendant had previously sexually assaulted another daughter pursuant to Rule 403 and subsection (b) of this rule. State v. Jacob, 113 N.C. App. 605, 439 S.E.2d 812 (1994).

Conversation Regarding Advantages of Committing Armed Robbery. — Evidence of defendant's alleged conversation with witness in which defendant, among other things, discussed the advantages of committing armed robbery over stealing and selling property as well as the manner in which it could be done, constituted Rule 404(b) evidence of another "crime, wrong, or act" on the part of defendant, but was admissible, inter alia, to show defendant had a plan, scheme, system, or design involving the commission of robberies. State v. Wilson, 108 N.C. App. 117, 423 S.E.2d 473 (1992).

Evidence Held Improper But Not Prejudicial. —

Testimony regarding defendant's failure to spend time with his sons did not tend to show that the victim was afraid of defendant or that she had no intention of reconciling with him. Rather, the evidence tended to show defendant's bad character and, as such, should not have been admitted. In light of all the evidence that was properly introduced, however, this tangential bit of evidence could not have affected the outcome of the trial; therefore, it was not prejudicial error. State v. Jolly, 332 N.C. 351, 420 S.E.2d 661 (1992).

Inadmissible Evidence Admitted but Held Harmless Error. — Although testimony was not relevant to any issue except the defendant's character to show that he had a propensity for bad acts and acted in conformity therewith in killing victim, it was harmless error to admit this testimony. In light of the strong substantive evidence against the defendant, as well as other evidence of bad acts including the ingestion of illegal drugs, the result would not have been different had this testimony been excluded. State v. Willis, 332 N.C. 151, 420 S.E.2d 158 (1992).

IV. ILLUSTRATIVE CASES.

Evidence Held Admissible. —

Testimony about defendant's frequent arguments with, violent acts toward, separations from, reconciliations with, and threats to, his wife were admissible under subsection (b) of this rule to prove issues defendant disputed in a trial for her murder, namely, lack of accident, intent, malice, premeditation and deliberation—notwithstanding that some of the incidents dated back to the beginning of the marriage. State v. Syriani, 333 N.C. 350, 428 S.E.2d 118 (1993).

Where defendant was tried for the first-degree murder of her husband, evidence of her affair with a co-conspirator was highly probative of her motive for wanting her husband murdered, and evidence of the defendant's theft of money and credit cards, coupled with evidence of her drug problems, tended to show that the defendant needed money which she stood to gain from the insurance proceeds due upon her husband's death; therefore, the trial court did not err in admitting the evidence. State v. Mahaley, 332 N.C. 583, 423 S.E.2d 58 (1992).

Where a statement regarding a prior sex act, rather than pertaining exclusively to defendant's character, was relevant to lend credibility to the State's confession, the evidence was admissible under section (b) of this rule. State v. Gibson, 333 N.C. 29, 424 S.E.2d 95 (1992).

Where the State's evidence showed that in both 1967 and in 1990 defendant gained the trust of his victims, lured them into an automobile and then took them to a different location where they were sexually assaulted, the similarities justified admitting the evidence of prior crimes to prove modus operandi and intent; furthermore, since the 1967 rape was also admissible on the question of consent, it was not so remote as to have lost its probative value. State v. Sneeden, 108 N.C. App. 506, 424 S.E.2d 449 (1993).

Where defendant had poisoned two other men with arsenic, given the similarities between the crime charged and the other crimes presented by the State, the evidence of the other offenses was relevant as evidence tending to prove modus operandi, motive, opportunity, intent and identity of defendant as the perpetrator. State v. Moore, 335 N.C. 567, 440 S.E.2d 797 (1994).

Evidence Held Inadmissible. —

Evidence that thirteen and one-half years prior to trial defendant had been convicted of armed robbery was admissible where the evidence presented by the State of the earlier armed robbery was sufficiently similar to the crimes charged to be admitted for the purpose of showing a modus operandi, motive and even identity, and where the evidence was not too remote in time to be probative of any fact at issue. State v. Wilson, 106 N.C. App. 342, 416 S.E.2d 603 (1992).

Trial judge did not err by allowing testimony about defendant's drug dealings; the disputed evidence was relevant to show defendant's motive for murder. State v. Ligon, 332 N.C. 224, 420 S.E.2d 136 (1992).

The trial court erred in allowing cross-examination of defendant about details of his prior convictions in that it bore no logical relevance to the crimes charged that would render it admissible under section (b), and it was not admissible to refute any inaccurate or misleading testimony or inferences raised by defendant. State v. Lynch, 334 N.C. 402, 432 S.E.2d 349 (1993).

Where defendant was convicted of second degree murder, evidence that defendant had previously shot over a truck was irrelevant and inadmissible and could not be deemed harmless error so that defendant was entitled to a new trial. State v. Irby, 113 N.C. App. 427, 439 S.E.2d 226 (1994).

Rule 405. Methods of proving character.

CASE NOTES

Expert Opinion on Credibility. — While it is true that in North Carolina expert testimony on the credibility of a witness is inadmissible, the defendant must show prejudicial error. State v. Davis, 106 N.C. App. 596, 418 S.E.2d 263 (1992), cert. denied, 333 N.C. 347, 426 S.E.2d 710 (1993).

Admission of Expert Opinion, Although Error, Not Prejudicial. — In trial of defendant accused of his wife's murder, trial court erred, under section (a) of this rule, in admitting expert psychiatrist's opinion that victim was not homicidal; however, defendant did not show that this amounted to prejudicial error under § 15A-1443(a). State v. Mixion, 110 N.C. App. 138, 429 S.E.2d 363, cert. denied, 334 N.C. 437, 433 S.E.2d 183 (1993).

Applied in State v. Cummings, 332 N.C. 487, 422 S.E.2d 692 (1992).

Cited in State v. Gibson, 333 N.C. 29, 424 S.E.2d 95 (1992).

Rule 406. Habit; routine practice.

CASE NOTES

Court to Make Inquiries. — This rule permits proof of habit by evidence of specific instances of conduct; before evidence of specific instances of conduct may be admitted to prove habit, however, the trial court must make certain inquiries to determine the reliability and probative value of the proffered evidence. Crawford v. Fayez, 112 N.C. App. 328, 435 S.E.2d 545 (1993), cert. denied, 335 N.C. 553, 441 S.E.2d 113 (1994).

Testimony Held Admissible. — It was not error to allow the decedent's sister to testify that she was familiar with the decedent's habit of keeping money and always having on her person from twenty to forty dollars. State v. Palmer, 334 N.C. 104, 431 S.E.2d 172 (1993).

Rule 407. Subsequent remedial measures.

CASE NOTES

Applied in Smith v. North Carolina Dep't of Natural Resources & Community Dev., 112 N.C. App. 739, 436 S.E.2d 878 (1993).

Rule 408. Compromise and offers to compromise.

Legal Periodicals. — For comment, "An End to Settlement on the Courthouse Steps? Mediated Settlement Conferences in North Carolina Superior Courts," see 71 N.C.L. Rev. 1857 (1993).

CASE NOTES

Applied in State v. Holder, 331 N.C. 462, 418 S.E.2d 197 (1992).

Rule 412. Rape or sex offense cases; relevance of victim's past behavior.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

By this statute, the legislature intended to exclude from evidence only the actual sexual history of the complainant and not prior false accusations made by the complainant. State v. McCarroll, 109 N.C. App. 574, 428 S.E.2d 229, cert. granted, 333 N.C. 794, 430 S.E.2d 426 (1993).

Cross-Examination of Defendant Concerning Defendant's In Camera Statements. — Contrary to defendant's position, this rule could not be utilized as a barrier to prevent cross-examination concerning critical inconsistencies in sworn testimony; therefore, the prosecution was properly permitted to cross-examine defendant concerning his prior inconsistent statements made at an in camera hearing. State v. Najewicz, 112 N.C. App. 280, 436 S.E.2d 132 (1993), cert. denied, 335 N.C. 362, 441 S.E.2d 130 (1994).

Exclusion of Evidence Upheld. — Evidence that someone other than defendant sexually abused child two and a half years before the incident resulting in a rape charge against defendant was properly excluded as being irrelevant and confusing to the jury. State v. Holden, 106 N.C. App. 244, 416 S.E.2d 415, appeal dismissed, 332 N.C. 669, 424 S.E.2d 413 (1992).

Exclusion of Evidence Held Error. — Defendant's evidence, which consisted of a letter written by victim to her friend asking her to engage in sex, was evidence of conversation, not of a prior sexual act. Therefore, testimony in sexual abuse case concerning the letter was not deemed irrelevant by this rule and was improperly excluded on that basis. State v. Guthrie, 110 N.C. App. 91, 428 S.E.2d 853, cert. denied, 333 N.C. 793, 431 S.E.2d 28 (1993).

Applied in State v. Black, 111 N.C. App. 284, 432 S.E.2d 710 (1993); State v. Mustafa, 113 N.C. App. 240, 437 S.E.2d 906 (1994).

Quoted in State v. Baker, 333 N.C. 325, 426 S.E.2d 73 (1993).

ARTICLE 6.

Witnesses.

Rule 601. General rule of competency; disqualification of witness.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

The test of competency, etc. — Subsection (b) of this rule does not ask how bright, how young, or how old a witness is. Instead, the question is: does the witness have the capacity to understand the difference between telling the truth and lying? State v. Davis, 106 N.C. App. 596, 418 S.E.2d 263 (1992), cert. denied, 333 N.C. 347, 426 S.E.2d 710 (1993).

Applied in Almond v. Rhyne, 108 N.C. App. 605, 424 S.E.2d 231 (1993).

Cited in State v. Rogers, 109 N.C. App. 491, 428 S.E.2d 220 (1993).

Rule 602. Lack of personal knowledge.

CASE NOTES

Testimony Held Improper. — Officer's testimony that it appeared just by looking over there that there had indeed been a break in at victim's home on the night in question constituted inadmissible opinion evidence. However, defendant was not entitled to a new trial unless the erroneous admission of this testimony prejudiced him. State v. Shaw, 106 N.C. App. 433, 417 S.E.2d 262, cert. denied, 333 N.C. 170, 424 S.E.2d 914 (1992).

Stated in State v. Palmer, 334 N.C. 104, 431 S.E.2d 172 (1993).

Rule 603. Oath or affirmation.

CASE NOTES

Cited in State v. Rogers, 109 N.C. App. 491, 428 S.E.2d 220 (1993).

Rule 606. Competency of juror as witness.

CASE NOTES

Information allegedly received by jurors did not concern either the defendant or the case being tried, but was rather information about the foreman's belief or impression about the impact of punitive damage awards; therefore, the trial court correctly refused to consider the juror affidavits under section (b). Berrier v. Thrift, 107 N.C. App. 356, 420 S.E.2d 206 (1992), cert. denied, 333 N.C. 254, 424 S.E.2d 918 (1993).

Admissibility of Jurors' Affidavits. — Subsection (b) reflects the common law rule that affidavits of jurors are inadmissible for the purposes of impeaching the verdict except as they pertain to extraneous influences that may have affected the jury's decision. State v. Robinson, 336 N.C. 78, 443 S.E.2d 306 (1994).

Applied in Borg-Warner Acceptance Corp. v. Johnston, 107 N.C. App. 174, 419 S.E.2d 195 (1992).

Rule 607. Who may impeach.

CASE NOTES

Defendant cannot call witness and then attempt to impeach him by inquiring into prior charges or indictments against the witness. State v. Mills, 332 N.C. 392, 420 S.E.2d 114 (1992).

Rule 608. Evidence of character and conduct of witness.

Legal Periodicals. — For essay, "Credence, Character, and the Rules of Evidence: Seeing Through the Liar's Tale," see 1993 Duke L.J. 776.

For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

CASE NOTES

I. General Consideration.
III. Specific Instances of Conduct.

I. GENERAL CONSIDERATION.

Applied in State v. Wills, 110 N.C. App. 206, 429 S.E.2d 376 (1993); State v. Black, 111 N.C. App. 284, 432 S.E.2d 710 (1993).

Quoted in State v. Brooks, 113 N.C. App. 451, 439 S.E.2d 234 (1994).

Cited in State v. Burton, 108 N.C. App. 219, 423 S.E.2d 484 (1992).

III. SPECIFIC INSTANCES OF CONDUCT.

Cross-Examination Held Proper. — Defendant, on trial for the murder of his wife, opened the door to the cross-examination regarding specific instances of misconduct toward both his wife and children where defendant testified on direct examination that he was a loving and supportive husband and father, that he did not intend to hurt his wife but rather unintentionally, or in self-defense, struck back at her with the screwdriver, trying only to get her to stop moving the car. The state was entitled to cross-examine defendant concerning the specific acts of prior misconduct—including threats, arguments, and acts of violence toward both his wife and children—to explain and rebut defendant's direct examination testimony. State v. Syriani, 333 N.C. 350, 428 S.E.2d 118 (1993).

Evidence Held Inadmissible. — The trial court erred by allowing the teacher of an alleged victim of sexual abuse to testify on direct examination regarding specific instances of the alleged victim's conduct which tended to establish her truthfulness. State v. Baymon, 108 N.C. App. 476, 424 S.E.2d 141, temporary stay denied, 333 N.C. 256, 426 S.E.2d 701 (1993).

Rule 609. Impeachment by evidence of conviction of crime.

Legal Periodicals. — For essay, "Credence, Character, and the Rules of Evidence: Seeing Through the Liar's Tale," see 1993 Duke L.J. 776.

CASE NOTES

The State is prohibited from eliciting details of prior convictions other than the name of the crime and the time, place, and punishment for impeachment purposes under section (a) of this Rule in the guilt-innocence phase of a criminal trial (overruling State v. Harrison, 90 N.C. App. 629, 369 S.E.2d 624 and State v. Gibson, 333 N.C. 29, 47-48, 424 S.E.2d 95, 105 (1992)). State v. Lynch, 334 N.C. 402, 432 S.E.2d 349 (1993).

Scope of Inquiry into Prior Convictions. —

The prosecution's repeated inquiries into the facts of prior crimes improperly exceeded the limitations on admissibility of evidence of prior convictions for impeachment purposes under section (a) of this Rule established in State v. Finch, 293 N.C. 132, 141, 235 S.E.2d 819, 825 (1977). State v. Lynch, 334 N.C. 402, 432 S.E.2d 349 (1993).

Applied in State v. Gibson, 333 N.C. 29, 424 S.E.2d 95 (1992).

Cited in State v. Cummings, 332 N.C. 487, 422 S.E.2d 692 (1992).

Rule 611. Mode and order of interrogation and presentation.

Legal Periodicals. — For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

CASE NOTES

Scope of Testimony on Redirect Examination. — Where witness' testimony on redirect examination went beyond the scope of her testimony during direct and cross-examination but the testimony was relevant and otherwise admissible and after its admission, the trial court provided the defendant an opportunity to recross-examine the witness, the trial court did not abuse its discretion. State v. Barton, 335 N.C. 696, 441 S.E.2d 295 (1994).

Control of Court over Mode and Order of Questioning. —

Where counsel for the defendant asked over 60 questions referencing an action arising out of events occurring some 12 to 14 years earlier and these inquiries related to an extremely remote event, they were minimally probative when compared to their prejudicial effect, and were therefore proscribed by Rule 403. Further, the continued repetitive questioning reflected the harassment and "needless consumption of time" that subsection (a) prohibits. Weston v. Daniels, 114 N.C. App. 418, 442 S.E.2d 69 (1994).

Harrassment of Witness. — Where expert witness was insulted, maligned, continually interrupted and bullied, though she weathered it all with considerable fortitude, the net result may still have been a less than complete, or less than accurate, statement of her opinion; thus, the court could not conclude that the prosecutor's improper conduct toward this witness caused no prejudice to defendant. State v. Sanderson, 336 N.C. 1, 442 S.E.2d 33 (1994).

Misconstruction of Answers by Questioner. — The questioner may not distort the witness' testimony by purposely misconstruing answers and cross-examining the witness on the basis of the misconstruction. State v. Sanderson, 336 N.C. 1, 442 S.E.2d 33 (1994).

Applied in State v. Webster, 111 N.C. App. 72, 431 S.E.2d 808 (1993); State v. Wilson, 335 N.C. 220, 436 S.E.2d 831 (1993); State v. Robinson, 336 N.C. 78, 443 S.E.2d 306 (1994).

Quoted in State v. Beach, 333 N.C. 733, 430 S.E.2d 248 (1993).

Stated in State v. Crummy, 107 N.C. App. 305, 420 S.E.2d 448, cert. denied, 332 N.C. 669, 424 S.E.2d 411 (1992).

Cited in State v. Pharr, 110 N.C. App. 430, 430 S.E.2d 267 (1993); State v. Lynch, 334 N.C. 402, 432 S.E.2d 349 (1993); State v. Lee, 335 N.C. 244, 439 S.E.2d 547 (1994).

Rule 612. Writing or object used to refresh memory.

CASE NOTES

Witness Need Not Establish Foundation for Use of Notes. — Defendant's assertion that this rule requires a witness to establish a foundation for the use of notes to refresh his memory was without merit; this rule stands for nothing other than the requirement that an adverse party is entitled to production of the writing or object which a witness used to refresh his or her memory. State v. Gibson, 333 N.C. 29, 424 S.E.2d 95 (1992), overruled on other grounds, 334 N.C. 402, 432 S.E.2d 353 (1993).

Quoted in Powell v. Omli, 110 N.C. App. 336, 429 S.E.2d 774 (1993).

ARTICLE 7.

Opinions and Expert Testimony.

Rule 701. Opinion testimony by lay witness.

CASE NOTES

Opinion of the Value of Personal Property. — A nonexpert witness who has knowledge of value gained from experience, information, and observation may give his opinion of the value of personal property. Maintenance Equip. Co. v. Godley Bldrs., 107 N.C. App. 343, 420 S.E.2d 199 (1992), cert. denied, 333 N.C. 345, 426 S.E.2d 707 (1993).

Capacity of Defendant to Commit Rape. — "Rape" is a legal term of art and accordingly witness' opinion testimony concerning whether defendant was "capable of rape" was properly excluded. State v. Najewicz, 112 N.C. App. 280, 436 S.E.2d 132 (1993), cert. denied, 335 N.C. 362, 441 S.E.2d 130 (1994).

Testimony Upheld. —
In light of strong and unequivocal evidence of direct threats against a woman, made by the defendant while she was in his presence and he was armed with a firearm, there was no reasonable possibility that admitting the opinion testimony of a security guard, who testified that defendant "said something else to me that indicated to me that he was planning to shoot a woman," affected the result reached by the jury at trial. Therefore, any error in the admission of this testimony was harmless. State v. Harvell, 334 N.C. 356, 432 S.E.2d 125 (1993).

Applied in State v. Marlow, 334 N.C. 273, 432 S.E.2d 275 (1993); State v. Parker, 111 N.C. App. 359, 432 S.E.2d 705 (1993); State v. Petersilie, 334 N.C. 169, 432 S.E.2d 832 (1993).

Stated in State v. Palmer, 334 N.C. 104, 431 S.E.2d 172 (1993).

Cited in State v. Stallings, 107 N.C. App. 241, 419 S.E.2d 586 (1992); State v. Hutchens, 110 N.C. App. 455, 429 S.E.2d 755 (1993); Powell v. Omli, 110 N.C. App. 336, 429 S.E.2d 774; State v. Jennings, 333 N.C. 579, 430 S.E.2d 188 (1993); State v. Dukes, 110 N.C. App. 695, 431 S.E.2d 209 (1993).

Rule 702. Testimony by experts.

CASE NOTES

I. General Consideration.
III. Expert Opinion Not Admissible.
IV. Expert Opinion Admissible.

I. GENERAL CONSIDERATION.

Who May Be Experts. — For witness' testimony to be admissible as expert testimony, the witness must be qualified by knowledge, skill, experience, training, or education. The expert only needs to be better qualified than the jury as to the subject at hand, with the testimony being "helpful" to the jury. Whether the witness qualifies as an expert is exclusively within the trial judge's discretion, and is not to be reversed on appeal absent a complete lack of evidence to support his ruling. State v. Davis, 106 N.C. App. 596, 418 S.E.2d 263 (1992), cert. denied, 333 N.C. 347, 426 S.E.2d 710 (1993).

Attorney Testimony as to Legal Conclusions. — Allowing plaintiffs' expert, an attorney, to testify to his individual interpretation of North Carolina law was improper as it amounted to no more than a jury instruction. Smith v. Childs, 112 N.C. App. 672, 437 S.E.2d 500 (1993).

Applied in Jones ex rel. Jones v. Hughes, 110 N.C. App. 262, 429 S.E.2d 399 (1993); State v. Shoemaker, 334 N.C. 252, 432 S.E.2d 314 (1993); State v. Richardson, 112 N.C. App. 58, 434 S.E.2d 657 (1993); State v. Hammond, 112 N.C. App. 454, 435 S.E.2d 798 (1993); Griffith ex rel. Griffith v. McCall, 114 N.C. App. 190, 441 S.E.2d 570 (1994).

Cited in State v. Hutchens, 110 N.C. App. 455, 429 S.E.2d 755 (1993); State v. Black, 111 N.C. App. 284, 432 S.E.2d 710 (1993); State v. Barton, 335 N.C. 696, 441 S.E.2d 295 (1994); State v. Hughes, 114 N.C. App. 742, 443 S.E.2d 76 (1994).

III. EXPERT OPINION NOT ADMISSIBLE.

Who Was Father in Paternity Action. — Genetics and paternity testing experts should not have been allowed to express their opinions that defendant was the children's father, because allowing an expert to express an opinion as to who is the father tramples upon the jury's domain. Brooks v. Hayes, 113 N.C. App. 168, 438 S.E.2d 420 (1993).

IV. EXPERT OPINION ADMISSIBLE.

Testimony on Chronic Alcohol Abuse. — Expert testimony that, as a result of his chronic alcohol abuse, the defendant suffered from organic impairment of brain functioning and from a loss of brain tissue which impaired his ability to think, plan, or reflect could assist the jury in determining a fact at issue — whether the defendant had premeditated and deliberated; therefore, this expert opinion testimony was not rendered inadmissible on the basis that it embraced the issues of premeditation and deliberation and specific intent to kill, which are ultimate issues to be determined by the jury. State v. Daniel, 333 N.C. 756, 429 S.E.2d 724 (1993).

Cited in State v. Moore, 107 N.C. App. 388, 420 S.E.2d 691 (1992).

Rule 703. Bases of opinion testimony by experts.

CASE NOTES

Information Commonly Used and Accepted. — Where expert relied on statistical information commonly used and accepted in his field, such evidence was allowed by this rule. State v. Demery, 113 N.C. App. 58, 437 S.E.2d 704 (1993).

Applied in State v. Richardson, 112 N.C. App. 58, 434 S.E.2d 657 (1993).

Quoted in State v. Hammond, 112 N.C. App. 454, 435 S.E.2d 798 (1993); State v. Futrell, 112 N.C. App. 651, 436 S.E.2d 884 (1993).

Stated in State v. Black, 111 N.C.

App. 284, 432 S.E.2d 710 (1993).

Cited in Jones ex rel. Jones v. Hughes, 110 N.C. App. 262, 429 S.E.2d 399 (1993); State v. Gay, 334 N.C. 467, 434 S.E.2d 840 (1993).

Rule 704. Opinion on ultimate issue.

CASE NOTES

Capacity to Premeditate. — Expert testimony that, as a result of his chronic alcohol abuse, the defendant suffered from organic impairment of brain functioning and from a loss of brain tissue which impaired his ability to think, plan, or reflect could assist the jury in determining a fact at issue — whether the defendant had premeditated and deliberated; such expert opinion testimony was not rendered inadmissible on the basis that it embraced the issues of premeditation and deliberation and specific intent to kill, which are ultimate issued to be determined by the jury. State v. Daniel, 333 N.C. 756, 429 S.E.2d 724 (1993).

Testimony of Attorney as to Legal Conclusions. — The trial court erred by allowing plaintiffs' expert witness, an attorney, to testify as to legal conclusions where the expert's testimony improperly invaded the trial court's province to determine the legal effect of a purchase money note and the guaranty executed in conjunction therewith, as well as the meaning of certain language in these documents. Smith v. Childs, 112 N.C. App. 672, 437 S.E.2d 500 (1993).

Defendant's Capacity to Rape. — "Rape" is a legal term of art and accordingly witness' opinion testimony concerning whether defendant was "capable of rape" was properly excluded. State v. Najewicz, 112 N.C. App. 280, 436 S.E.2d 132 (1993), cert. denied, 335 N.C. 362, 441 S.E.2d 130 (1994).

Applied in State v. Richardson, 112 N.C. App. 58, 434 S.E.2d 657 (1993).

Cited in State v. Moore, 107 N.C. App. 388, 420 S.E.2d 691 (1992); State v. Jennings, 333 N.C. 579, 430 S.E.2d 188 (1993).

Rule 705. Disclosure of facts or data underlying expert opinion.

CASE NOTES

Applied in Workman v. Workman, 106 N.C. App. 562, 418 S.E.2d 269 (1992).

Stated in State v. Black, 111 N.C. App. 284, 432 S.E.2d 710 (1993).

Cited in State v. Bronson, 333 N.C. 67, 423 S.E.2d 772 (1992).

Rule 706. Court appointed experts.

CASE NOTES

Cited in Godley v. Godley, 110 N.C. App. 99, 429 S.E.2d 382 (1993).

ARTICLE 8.

Hearsay.

Rule 801. Definitions and exception for admissions of a party-opponent.

CASE NOTES

Evidence Not Hearsay. — When evidence of a statement by someone other than the testifying witness is offered for a purpose other than to prove the truth of the matter asserted, the evidence is not hearsay. State v. Reid, 335 N.C. 647, 440 S.E.2d 776 (1994).

Composite Picture of Perpetrator Not a Statement. — A composite picture of a perpetrator prepared by police pursuant to the directions of a witness to a crime does not constitute a statement. Such a composite picture is the functional equivalent of a photograph in that it merely reflects the perpetrator's likeness, albeit as recorded by the witness' eyes rather than the witness' camera. No assertion or statement is involved. Therefore, a composite picture is not hearsay as defined by subsection (c) of this rule and Rule 802, and does not apply to bar the admission of a composite picture into evidence. State v. Patterson, 332 N.C. 409, 420 S.E.2d 98 (1992).

Jury's Province To Draw Inferences from Silence. — A response which is not the equivalent of a denial may indicate acquiescence and be considered by the jury for what it is worth; where the evidence leaves the matter in doubt, it is the jury's province to determine whether the remarks were heard and understood, and to draw inferences from the person's silence. State v. Thompson, 332 N.C. 204, 420 S.E.2d 395 (1992).

Defendant's comments concerning statements he made to a coworker, to the extent they were hearsay, fell within the exception to the hearsay rule for admissions by a party opponent. State v. Collins, 335 N.C. 729, 440 S.E.2d 559 (1994).

When Acts and Declarations of Co-conspirators Are Admissible. —

In accord with the main volume. See State v. Willis, 332 N.C. 151, 420 S.E.2d 158 (1992).

Admission of Acts or Declarations of Co-conspirator Before Conspiracy Is Established. —

While a prima facie showing of the existence of a conspiracy must be established independently of the statements sought to be admitted, the trial court may use such statements in establishing the times when the conspiracy was entered and terminated. State v. Mahaley, 332 N.C. 583, 423 S.E.2d 58 (1992).

Co-conspirator's Statement Properly Admitted. —

Where there was substantial evidence that the defendant had entered a conspiracy to kill her husband and that a co-conspirator's statements to another co-conspirator were in furtherance of and during the conspiracy, the trial court did not err by admitting testimony of the co-conspirator to whom the statements were made regarding those statements. State v. Mahaley, 332 N.C. 583, 423 S.E.2d 58 (1992).

Evidence Held Admissible. —

Statements of one person to another are not hearsay if the statement is made to explain the subsequent conduct of the person to whom the statement was made. State v. Reid, 335 N.C. 647, 440 S.E.2d 776 (1994).

Defendant's statements to victim concerning his crimes against another victim, if relevant, were admissible pursuant to subsection (d) and were relevant because they tended to show that the murder was especially heinous, atrocious, or cruel and tended to show the murder was part of a course of conduct. State v. Lee, 335 N.C. 244, 439 S.E.2d 547 (1994).

Applied in State v. Holder, 331 N.C. 462, 418 S.E.2d 197 (1992); State v. Williams, 333 N.C. 719, 430 S.E.2d 888 (1993); State v. Marlow, 334 N.C. 273, 432 S.E.2d 275 (1993); State v. Withers, 111 N.C. App. 340, 432 S.E.2d 692 (1993); Melton v. Hodges, 114 N.C. App. 795, 443 S.E.2d 83 (1994).

Stated in State v. Petersilie, 334 N.C.

169, 432 S.E.2d 832 (1993).

Cited in State v. Jolly, 332 N.C. 351, 420 S.E.2d 661 (1992); Southern Ry. v. Biscoe Supply Co., 114 N.C. App. 474, 442 S.E.2d 127 (1994).

Rule 802. Hearsay rule.

Legal Periodicals. —

For article, "Confrontation and Hearsay: New Wine in An Old Bottle," 16 Campbell L. Rev. 1 (1994).

CASE NOTES

Exception to hearsay rule may violate constitutional guarantees of the right of confrontation. — Even if an out-of-court statement properly falls within an exception to the hearsay rule, it nonetheless must be excluded at a criminal trial if it infringes upon the defendant's constitutional right to confrontation. State v. Rogers, 109 N.C. App. 491, 428 S.E.2d 220, cert. denied, 344 N.C. 625, 435 S.E.2d 348 (1993), — U.S. —, 114 S. Ct. 1378, 128 L. Ed. 2d 54 (1994).

Composite Picture of Perpetrator Not a Statement. — A composite picture of a perpetrator prepared by police pursuant to the directions of a witness to a crime does not constitute a statement. Such a composite picture is the functional equivalent of a photograph in that it merely reflects the perpetrator's likeness, albeit as recorded by the witness' eyes rather than the witness' camera. No assertion or statement is involved. Therefore, a composite picture is not hearsay as defined by this rule and Rule 801(c), and does not apply to bar the admission of a composite picture into evidence. State v. Patterson, 332 N.C. 409, 420 S.E.2d 98 (1992).

Stated in State v. Petersilie, 334 N.C. 169, 432 S.E.2d 832 (1993).

Rule 803. Hearsay exceptions; availability of declarant immaterial.

Legal Periodicals. —

For note, "Constitutional Admissibility of Hearsay Under the Confrontation Clause: Reliability Requirement for Hearsay Admitted Under a Non-'Firmly Rooted' Exception," see 14 Campbell L. Rev. 347 (1993).

For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

For article, "Confrontation and Hearsay: New Wine in An Old Bottle," 16 Campbell L. Rev. 1 (1994).

CASE NOTES

I. General Consideration.
III. Excited Utterances.
IV. Mental, Emotional or Physical Condition.
V. Statements for Diagnosis or Treatment.
VI. Recorded Recollection.
VII. Records of Regularly Conducted Activity.
VIII. Public Records and Reports.
XIII. Other Exceptions.

I. GENERAL CONSIDERATION.

Applied in In re Gallinato, 106 N.C. App. 376, 416 S.E.2d 601 (1992); State v. Holder, 331 N.C. 462, 418 S.E.2d 197 (1992); State v. Mebane, 106 N.C. App. 516, 418 S.E.2d 245 (1992); State v. Clark, 107 N.C. App. 184, 419 S.E.2d 188 (1992); State v. Jolly, 332 N.C. 351, 420 S.E.2d 661 (1992); State v. Walker, 332 N.C. 520, 422 S.E.2d 716 (1992); State v. Gibson, 333 N.C. 29, 424 S.E.2d 95 (1992); State v. Palmer, 334 N.C. 104, 431 S.E.2d 172 (1993); State v. Shoemaker, 334 N.C. 252, 432 S.E.2d 314 (1993); State v. Richardson, 112 N.C. App. 58, 434 S.E.2d 657 (1993); State v.

McHone, 334 N.C. 627, 435 S.E.2d 296 (1993).

Stated in Smith v. North Carolina Dep't of Natural Resources & Community Dev., 112 N.C. App. 739, 436 S.E.2d 878 (1993); Murray v. Associated Insurers, Inc., 114 N.C. App. 506, 442 S.E.2d 370 (1994).

Cited in Lombroia v. Peek, 107 N.C. App. 745, 421 S.E.2d 784 (1992); Phelps v. Phelps, 109 N.C. App. 242, 426 S.E.2d 294 (1993); State v. Rogers, 109 N.C. App. 491, 428 S.E.2d 220 (1993); State v. Mixion, 110 N.C. App. 138, 429 S.E.2d 363 (1993); State v. Oxendine, 112 N.C. App. 731, 436 S.E.2d 906 (1993); State v. Oakes, 113 N.C. App. 332, 438 S.E.2d 477 (1994).

III. EXCITED UTTERANCES.

Statement Admissible as Excited Utterance. —
Testimony of witness on voir dire that victim told him that defendant attempted to kill her and that victim wanted to move in with witness provided a plausible reason and factual basis for the victim's fear of defendant, which was relevant to show the nature of the victim's relationship with defendant and the impact of the defendant's behavior on the victim's state of mind prior to the murder. State v. Glenn, 333 N.C. 296, 425 S.E.2d 688 (1993).

The rationale for the admissibility of an excited utterance is its trustworthiness, etc. —
The reason for allowing the excited utterances exception is that circumstances may produce a condition of excitement which temporarily stills the capacity of reflection and produces spontaneous and sincere utterances. State v. Reid, 335 N.C. 647, 440 S.E.2d 776 (1994).

Child Victim of Sexual Assault. — Because testimony indicated that statements by a child, allegedly the victim of a sexual assault, were (1) spontaneous and not in response to any questioning on the part of the adult to whom they were made, (2) related to the alleged sexual assault, a "startling event," particularly to a young child, and (3) were made only three days after such assault, the testimony was properly admitted pursuant to subdivision (2) of this rule. State v. Rogers, 109 N.C. App. 491, 428 S.E.2d 220, cert. denied, 344 N.C. 625, 435 S.E.2d 348 (1993), — U.S. —, 114 S. Ct. 1378, 128 L. Ed. 2d 54 (1994).

IV. MENTAL, EMOTIONAL OR PHYSICAL CONDITION.

Statement of Intent to Engage in Future Act, etc. —
In accord with first paragraph in the main volume. See State v. Taylor, 332 N.C. 372, 420 S.E.2d 414 (1992).

Subdivision (3) of this rule does not contain a requirement that the declarant's statement must be closely related in time to the future act intended. A review of the cases interpreting subdivision (3) of this rule does not reveal that any such requirement has been read into the statute. State v. Taylor, 332 N.C. 372, 420 S.E.2d 414 (1992).

Testimony Held Admissible. —
Statements made by an alleged victim of a sexual assault during the course of diagnosis by her therapist as a sexually abused child and during her treatment were properly admitted by the trial court under subdivision (4) of this rule. State v. Rogers, 109 N.C. App. 491, 428 S.E.2d 220, cert. denied, 344 N.C. 625, 435 S.E.2d 348 (1993), — U.S. —, 114 S. Ct. 1378, 128 L. Ed. 2d 54 (1994).

V. STATEMENTS FOR DIAGNOSIS OR TREATMENT.

Subjective record plaintiff kept of her pain fell under the hearsay exception for statements for purposes of medical diagnosis or treatment under subsection (4) of this rule. Reed v. Abrahamson, 108 N.C. App. 301, 423 S.E.2d 491 (1992), cert. denied, 333 N.C. 463, 427 S.E.2d 624 (1993).

VI. RECORDED RECOLLECTION.

Used to Refresh Recollection or Impeachment. — Where prior statements were used either to refresh the witnesses' recollections, or to impeach portions of his courtroom testimony which were inconsistent with them, use of the statements was proper. State v. Demery, 113 N.C. App. 58, 437 S.E.2d 704 (1993).

VII. RECORDS OF REGULARLY CONDUCTED ACTIVITY.

Sales Ticket. — Sales ticket and testimony concerning the purchase of ammunition from store was admissible under the business records exception. State v. Ligon, 332 N.C. 224, 420 S.E.2d 136 (1992).

Reservation deposit receipts, photographic copies of checks written to condominium development corporation by potential purchasers as deposits, and receipts for public offering statements signed by the purchaser and sales person were admissible in trial for embezzlement pursuant to the business records exception to the hearsay rule. State v. Rupe, 109 N.C. App. 601, 428 S.E.2d 480 (1993).

VIII. PUBLIC RECORDS AND REPORTS.

Evidence in a Police Report Properly Admitted. — Testimony of police officer concerning statements made by decedent at the scene of the accident, made via police officer's investigative report, was admissible pursuant to subdivision (6) as a record of regularly conducted activity and subdivision (8) as a public record and report. Keith v. Polier, 109 N.C. App. 94, 425 S.E.2d 723 (1993).

XIII. OTHER EXCEPTIONS.

Trustworthiness of Child Victim's Out-of-Court Statements, etc. — In a rape prosecution, child victim's hearsay statements to police officer and counselor were sufficiently trustworthy to be admitted pursuant to residual hearsay exception of subdivision (24) of this rule despite trial judge's lone statement, found in the transcript of the in camera hearing, that the child "did not seem to understand the consequences of not telling the truth." State v. Holden, 106 N.C. App. 244, 416 S.E.2d 415, appeal dismissed, 332 N.C. 669, 424 S.E.2d 413 (1992).

Rule 804. Hearsay exceptions; declarant unavailable.

Legal Periodicals. — For note, "Constitutional Admissibility of Hearsay Under the Confrontation Clause: Reliability Requirement for Hearsay Admitted Under a Non-'Firmly Rooted' Exception," see 14 Campbell L. Rev. 347 (1993).

For article, "Confrontation and Hearsay: New Wine in An Old Bottle," 16 Campbell L. Rev. 1 (1994).

CASE NOTES

I. General Consideration.
V. Statement against Interest.

I. GENERAL CONSIDERATION.

Quoted in State v. Brown, 335 N.C. 477, 439 S.E.2d 589 (1994).

Cited in State v. Holden, 106 N.C. App. 244, 416 S.E.2d 415 (1992); State v. Clark, 107 N.C. App. 184, 419 S.E.2d 188 (1992); State v. Jolly, 332 N.C. 351, 420 S.E.2d 661 (1992); State v. McHone, 334 N.C. 627, 435 S.E.2d 296 (1993).

V. STATEMENT AGAINST INTEREST.

Statements Not Found to Be Against Interest. — Statements made by arrestee to defendant admitting that LSD found in a box underneath the defendant while in arrestee's car belongs to arrestee and not to defendant were not admissible as statements made against arrestee's penal interests under subdivision (b)(3) because it is simply not a crime to know that drugs do not belong to a particular individual. State v. Eggert, 110 N.C. App. 614, 430 S.E.2d 699 (1993).

ARTICLE 9.

Authentication and Identification.

Rule 901. Requirement of authentication or identification.

CASE NOTES

Authentication of Tape Recording. —

The trial court erred by excluding a tape recording offered to impeach testimony of coconspirator based on improper foundation, where a witness had sufficient personal knowledge of coconspirator's voice to properly identify her voice from a prior relationship, and the State and defendant stipulated to the date of the tape recording. State v. Withers, 111 N.C. App. 340, 432 S.E.2d 692, cert. denied, 335 N.C. 180, 438 S.E.2d 207 (1993).

Evidence Held Admissible. — Where witness testified concerning his familiarity with defendant's handwriting, there was sufficient evidence to support the trial court's admission of handwritten letter into evidence. State v. Wiggins, 334 N.C. 18, 431 S.E.2d 755 (1993).

Applied in State v. Holder, 331 N.C. 462, 418 S.E.2d 197 (1992); State v. Gibson, 333 N.C. 29, 424 S.E.2d 95 (1992); State v. Baker, 112 N.C. App. 410, 435 S.E.2d 812 (1993).

Stated in State v. Lee, 335 N.C. 244, 439 S.E.2d 547 (1994).

Cited in State v. Williams, 334 N.C. 440, 434 S.E.2d 588 (1993).

ARTICLE 10.

Contents of Writings, Recordings and Photographs.

Rule 1002. Requirement of original.

CASE NOTES

Best Evidence Rule Not Applicable. — Where detective was not attempting to prove the contents of the tape recording or the transcript of the recorded statement given by defendant, but used the transcript of the recorded statement to refresh his personal recollection of defendant's responses to the questions asked, the "best evidence" rule did not apply. State v. Brown, 335 N.C. 477, 440 S.E.2d 98 (1994).

Chapter 9.

Jurors.

Article 1.

Jury Commissions, Preparation of Jury Lists, and Drawing of Panels.

Sec.
9-1. Jury commission in each county; membership; selection; oath; terms; expenses of jury system.
9-5. Procedure for drawing panel of jurors; numbers drawn.
9-6. Jury service a public duty; excuses to be allowed in exceptional cases; procedure.

Article 2.

Petit Jurors.

9-12. Supplemental jurors from other counties.

Article 5.

Discharge of Jurors Prohibited.

9-32. Discharge of juror unlawful.

ARTICLE 1.

Jury Commissions, Preparation of Jury Lists, and Drawing of Panels.

§ 9-1. Jury commission in each county; membership; selection; oath; terms; expenses of jury system.

Not later than July 1, 1967, there shall be appointed in each county a jury commission of three members. One member of the commission shall be appointed by the senior regular resident superior court judge, one member by the clerk of superior court, and one member by the board of county commissioners. The appointees shall be qualified voters of the county, and shall serve for terms of two years. Appointees may be reappointed to successive terms. A vacancy in the commission shall be filled in the same manner as the original appointment, for the unexpired term. Each commissioner shall take an oath or affirmation that, without favor or prejudice, he will honestly perform the duties of a member of the jury commission during his term of service. The compensation of commissioners shall be fixed by the board of county commissioners, and shall be paid from the general fund of the county. All expenses necessary to carry out the provisions of this Chapter and to administer the jury system, including all data processing, document processing, supplies, postage, and other similar expenses, except as otherwise provided in this Chapter, shall be paid from the general fund of the county, except that the clerk of superior court shall furnish clerical or other personnel assistance, as the commission may reasonably require. (1967, c. 218, s. 1; 1981, c. 720, s. 3; 1991, c. 729, s. 1.)

Effect of Amendments. — The 1991 amendment, effective July 1, 1991, and applicable to expenses incurred on or after July 1, 1991, added "expenses of jury system" to the catchline, and, in the last sentence added "All expenses necessary to carry out the provisions of this Chapter and to administer the jury system, including all data processing, document processing, supplies, postage, and other similar expenses, except as otherwise provided in this Chapter, shall be paid from the general fund of the county, except that," deleted "assistance to the commission, as necessary" following "furnish clerical," and added "or other personnel assistance, as the commission may reasonably require."

CASE NOTES

Deviations from the statutory norm do not automatically constitute reversible error absent an express statutory provision to the contrary. State v. Johnson, 317 N.C. 343, 346 S.E.2d 596 (1986).

In order to justify a motion to quash an indictment upon grounds that statutory procedures were violated in the compilation of the jury list, a party must show corrupt intent, systematic discrimination in the compilation of the list, or irregularities which affect the actions of the jurors actually drawn and summoned. State v. Johnson, 317 N.C. 343, 346 S.E.2d 596 (1986).

Compilation of Jury List by Two-Person Commission. — Defendant failed to present any evidence that the two-person commission which acted when the third commissioner was killed acted with corrupt intent, or that the use of a two-person instead of three-person commission resulted in either systematic discrimination in the compilation of the jury list or irregularities which affected the actions of the jurors actually drawn and summoned. State v. Johnson, 317 N.C. 343, 346 S.E.2d 596 (1986).

Cited in State v. Moore, 100 N.C. App. 217, 395 S.E.2d 434 (1990).

§ 9-2. Preparation of jury list; sources of names.

CASE NOTES

I. General Consideration.
II. Sources of List.
III. Proof of Discrimination.

I. GENERAL CONSIDERATION.

Deviations from the statutory norm do not automatically constitute reversible error absent an express statutory provision to the contrary. State v. Johnson, 317 N.C. 343, 346 S.E.2d 596 (1986).

In order to justify a motion to quash an indictment upon grounds that statutory procedures were violated in the compilation of the jury list, a party must show corrupt intent, systematic discrimination in the compilation of the list, or irregularities which affect the actions of the jurors actually drawn and summoned. State v. Johnson, 317 N.C. 343, 346 S.E.2d 596 (1986).

Cited in State v. Mayes, 323 N.C. 159, 371 S.E.2d 476 (1988).

II. SOURCES OF LIST.

Compilation of List in 1981. — Commission was not required to use as a source of names the list of licensed drivers residing in the county, where in accord with subsection (a) of this section, the jury list for the county for the biennium beginning January 1, 1982, was compiled November 23 and 24, 1981, as at that time subsection (c) of this section was not in effect, even though the trial began in October 1983. State v. Johnson, 317 N.C. 343, 346 S.E.2d 596 (1986).

III. PROOF OF DISCRIMINATION.

Sample of 40 Jurors Insufficient. — A small sample of 40 jurors from the master list of jurors of a county alone was insufficient to establish a systematic exclusion of blacks from the jury pool. State v. McNeill, 326 N.C. 712, 392 S.E.2d 78 (1990).

§ 9-3. Qualifications of prospective jurors.

CASE NOTES

Stated in United States v. McLean, 904 F.2d 216 (4th Cir.)

§ 9-5. Procedure for drawing panel of jurors; numbers drawn.

The board of county commissioners in each county shall provide the clerk of superior court with a jury box, the construction and dimensions of which shall be prescribed by the administrative officer of the courts. At least 30 days prior to January 1 of any year for which a list of prospective jurors has been prepared, a number of discs, squares, counters or markers equal to the number of names on the jury list shall be placed in the jury box. The discs, squares, counters, or markers shall be uniform in size, weight, and appearance, and may be made of any suitable material. They shall be numbered consecutively to correspond with the numbers on the jury list. The jury box shall be of sufficient size to hold the discs, squares, counters or markers so that they may be easily shaken and mixed, and the box shall have a hinged lid through which the discs, squares, counters or markers can be drawn. The lid shall have a lock, the key to which shall be kept by the clerk of superior court.

At least 30 days prior to any session or sessions of superior or district court requiring a jury, the clerk of superior court or his assistant or deputy shall, in public, after thoroughly shaking the box, draw therefrom the number of discs, squares, counters, or markers equal to the number of jurors required for the session or sessions scheduled. For each week of a superior court session, the senior resident superior court judge for the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located shall specify the number of jurors to be drawn. For each week of a district court jury session, the chief district judge of the district court district in which the county is located shall specify the number of jurors to be drawn. Pooling of jurors between or among concurrent sessions of various courts is authorized in the discretion of the senior regular resident superior court judge. When pooling is utilized, the senior regular resident superior court judge, after consultation with the chief district judge when a district court jury is required, shall specify the total number of jurors to be drawn for such concurrent sessions. When grand jurors are needed, nine additional numbers shall be drawn.

As the discs, squares, counters, or markers are drawn, they shall be separately stored by the clerk until a new jury list is prepared.

The clerk of superior court shall deliver the list of numbers drawn from the jury box to the register of deeds, who shall match the numbers received with the numbers on the jury list. The register of deeds shall within three days thereafter notify the sheriff to summon for jury duty the persons on the jury list whose numbers are thus matched. The persons so summoned may serve as jurors in either the superior or the district court, or both, for the week for which summoned. Jurors who serve each week shall be discharged at the close of the weekly session or sessions, unless actually engaged in the trial of a case, and then they shall not be discharged until their service in that case is completed. (1806, c. 694, P.R.; 1868-9, c. 9, ss. 5, 6; c. 175; Code, ss. 1726, 1727, 1731; 1889, c. 559; 1897, c. 117; 1901, c. 28, s. 3; c. 636; 1903, c. 11; 1905, c. 38; c. 76, s. 4; c. 285; Rev., ss. 1958, 1959; C.S., ss. 2313, 2314; 1967, c. 218, s. 1; 1969, c. 205, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 38.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "the senior resident superior court judge for the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located" for "the senior regular resident superior court judge" in the second sentence of the second paragraph, and inserted "of the district court district in which the county is located" in the third sentence of the second paragraph.

§ 9-6. Jury service a public duty; excuses to be allowed in exceptional cases; procedure.

(a) The General Assembly hereby declares the public policy of this State to be that jury service is the solemn obligation of all qualified citizens, and that excuses from the discharge of this responsibility should be granted only for reasons of compelling personal hardship or because requiring service would be contrary to the public welfare, health, or safety.

(b) Pursuant to the foregoing policy, each chief district court judge shall promulgate procedures whereby he or any district court judge of his district court district designated by him, prior to the date that a jury session (or sessions) of superior or district court convenes, shall receive, hear, and pass on applications for excuses from jury duty. The procedures shall provide for the time and place, publicly announced, at which applications for excuses will be heard, and prospective jurors who have been summoned for service shall be so informed. In counties located in a district or set of districts as defined in G.S. 7A-41.1(a) which have a trial court administrator, the chief district judge may assign the duty of passing on applications for excuses from jury service to the administrator. In all cases concerning excuses, the clerk of court or the trial court administrator shall notify prospective jurors of the disposition of their excuses.

(c) A prospective juror excused by a judge in the exercise of the discretion conferred by subsection (b) may be required by the judge to serve as a juror in a subsequent session of court. If required to serve subsequently, the juror shall be considered on such occasion the same as if he were a member of the panel regularly summoned for jury service at that time.

(d) A judge hearing applications for excuses from jury duty shall excuse any person disqualified under § 9-3.

(e) The judge shall inform the clerk of superior court of persons excused under this section, and the clerk within 10 days shall so notify the register of deeds, who shall note the excuse on the juror's card and file it separately from the jury list.

(f) The discretionary authority of a presiding judge to excuse a juror at the beginning of or during a session of court is not affected by this section. (1967, c. 218, s. 1; 1969, c. 205, ss. 4, 5; 1971, c. 377, s. 30; 1979, 2nd Sess., c. 1207, s. 1; 1981, c. 430, s. 2; 1985, c. 609, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 47.)

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "each chief district court judge" for "the chief district judge of each district" and "any district court judge of his district court district" for "any district judge" in the first sentence of subsection (b), substituted "In counties located in a district or set of districts as defined in G.S. 7A-41.1(a) which" for "In districts that," in the third sentence of subsection (b), and deleted "in districts that have a trial court administrator" following "or the trial court administrator" in the last sentence of subsection (b).

CASE NOTES

Judges' Power to Excuse Jurors. — Although subsection (f) of this section provides that superior court judges have the power to excuse jurors, this power must be exercised within the constraints of constitutional requirements. State v. Cole, 331 N.C. 272, 415 S.E.2d 716 (1992).

Failure to Strictly Comply with Section Not Grounds for New Trial. — Although it was clear that the district court judge failed to strictly comply with the provisions of this section governing the excusal of jurors, the alleged statutory irregularities did not constitute error; defendant was not entitled to a new trial because the evidence tended to negate any corrupt intent, discrimination or irregularities which affected the action of the jurors actually drawn and summoned. State v. Murdock, 325 N.C. 522, 385 S.E.2d 325 (1989).

But Compliance with Section Suggested. — Although the actions of the trial judge did not result in error, the Supreme Court would suggest that district court judges excuse jurors only in keeping with the language and the spirit of this section. State v. Murdock, 325 N.C. 522, 385 S.E.2d 325 (1989).

Admonishment of Juror. — It is not improper for a judge to admonish a prospective juror for taking a position solely for the purpose of being excused from jury duty. State v. Weeks, 322 N.C. 152, 367 S.E.2d 895 (1988).

ARTICLE 2.

Petit Jurors.

§ 9-11. Supplemental jurors; special venire.

CASE NOTES

Discretion of Judge. — The section neither explicitly nor impliedly requires the judge to wait a certain amount of time so that a particular number of summonses can be served. State v. Mebane, 106 N.C. App. 516, 418 S.E.2d 245, cert. denied, 332 N.C. 670, 424 S.E.2d 414 (1992).

§ 9-12. Supplemental jurors from other counties.

(a) On motion of any party or the State, or on his own motion, any judge of the superior court, if he is of the opinion that it is necessary in order to provide a fair trial in any case, and regardless of whether he will preside over the trial of that case, may order as many jurors as he deems necessary to be summoned from any county or counties in the district or set of districts as defined in G.S. 7A-41.1(a) in which the county of trial is located or in any adjoining district or set of districts. These jurors shall be selected and shall serve in the manner provided for selection and service of supplemental jurors selected from the jury list. These jurors shall be subject to the same challenges as other jurors, except challenges for nonresidence in the county of trial.

(b) Transportation may be furnished in lieu of mileage.

(c) Repealed by Session Laws 1971, c. 377, s. 32. (1913, c. 4, ss. 1, 2; C.S., s. 473; 1931, c. 308; 1933, c. 248; 1961, c. 110; 1967, c. 218, s. 1; 1971, c. 377, s. 32; 1987 (Reg. Sess., 1988), c. 1037, s. 48.)

Editor's Note. — This section was amended by Session Laws 1987 (Reg. Sess., 1988), c. 1037, s. 48, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective January 1, 1989, substituted "in the district or set of districts as defined in G.S. 7A-41.1(a) in which the county of trial is located" for "in the same judicial district as the county of trial" and "district or set of districts" for "judicial district" in the first sentence of subsection (a).

§ 9-14. Jury sworn; judge decides competency.

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

The presiding judge has the duty to supervise the examination of prospective jurors. State v. Allen, 322 N.C. 176, 367 S.E.2d 626 (1988); State v. Green, 336 N.C. 142, 443 S.E.2d 14 (1994).

Regulation of the manner and extent of inquiries on voir dire rests largely in the trial judge's discretion. State v. Allen, 322 N.C. 176, 367 S.E.2d 626 (1988); State v. Green, 336 N.C. 142, 443 S.E.2d 14 (1994).

§ 9-15. Questioning jurors without challenge; challenges for cause.

CASE NOTES

I. In General.

I. IN GENERAL.

The questioning of jurors in defendant's absence erroneously deprived defendant of his right to be present at his trial, but the error was harmless where the court was satisfied here beyond a reasonable doubt that defendant's absence during the preliminary questioning of prospective jurors did not result in the rejection of any juror whom defendant was entitled to have on the panel or the seating of any juror whom defendant was entitled to reject either for cause or peremptorily. State v. Payne, 328 N.C. 377, 402 S.E.2d 582 (1991).

Applied in State v. Soyars, 332 N.C. 47, 418 S.E.2d 480 (1992).

Quoted in State v. Crummy, 107 N.C. App. 305, 420 S.E.2d 448, cert. denied, 332 N.C. 669, 424 S.E.2d 411 (1992).

§ 9-18. Alternate jurors.

CASE NOTES

Cited in State v. Godwin, 95 N.C. App. 565, 383 S.E.2d 234 (1989).

ARTICLE 3.

Peremptory Challenges.

§ 9-19. Peremptory challenges in civil cases.

CASE NOTES

Peremptory Challenges on Basis of Race Prohibited. — N.C. Const., Art. I, § 26 proscribes peremptory challenges to jurors on the basis of race in civil cases as well as criminal cases. Jackson v. Housing Auth., 321 N.C. 584, 364 S.E.2d 416 (1988).

Transcript of Jury Voir Dire Must Be Provided to Reviewing Court. — As a rule of practice, counsel who seek to rely upon an alleged impropriety in the jury selection process must provide the reviewing court with the relevant portions of the transcript of the jury voir dire. Jackson v. Housing Auth., 321 N.C. 584, 364 S.E.2d 416 (1988).

§ 9-20. Civil cases having several defendants; challenges apportioned; discretion of judge.

CASE NOTES

No Authority to Allot a Defendant More than Six Challenges. — Having found that the interests of the defendants were antagonistic, this section authorized the trial judge in his discretion to either apportion between them the eight peremptory challenges allotted to the defendants or to increase the peremptory challenges of each defendant up to a maximum of six; it did not authorize the judge to allot either defendant more than six peremptory challenges. Shuford v. McIntosh, 104 N.C. App. 201, 408 S.E.2d 747 (1991).

§ 9-21. Peremptory challenges in criminal cases governed by Chapter 15A.

CASE NOTES

Cited in State v. Johnson, 317 N.C. 343, 346 S.E.2d 596 (1986).

ARTICLE 5.

Discharge of Jurors Prohibited.

§ 9-32. Discharge of juror unlawful.

(a) No employer may discharge or demote any employee because the employee has been called for jury duty, or is serving as a grand juror or petit juror.

(b) Any employer who violates any provision of this section shall be liable in a civil action for reasonable damages suffered by an employee as a result of the violation, and an employee discharged or demoted in violation of this section shall be entitled to be reinstated to his former position. The burden of proof shall be upon the employee.

(c) The statute of limitations for actions under this section shall be one year pursuant to G.S. 1-54. (1987, c. 702, s. 1.)

Editor's Note. — Session Laws 1987, c. 702, s. 2 made this Article effective October 1, 1987.

Legal Periodicals. — For article, "North Carolina Employment Law After Coman: Reaffirming Basic Rights in the Workplace," see 24 Wake Forest L. Rev. 905 (1989).

Chapter 10A.

Notaries.

Sec.
10A-12. (Effective October 1, 1994 — See editor's note) Penalties.

§ 10A-4. Commissioning.

CASE NOTES

Cited in Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

§ 10A-9. Powers and limitations.

Editor's Note. — The citations to McNeal Pipe & Foundry Co. v. Woltman, Keith & Co., which appear under this section in the main volume, are incorrect. The correct citation is McNeal Pipe & Foundry Co. v. Woltman, Keith & Co., 114 N.C. 113, 19 S.E. 109 (1894).

§ 10A-12. (Effective October 1, 1994 — See editor's note) Penalties.

(a) Any person who holds himself or herself out to the public as a notary or who performs notarial acts and is not commissioned is guilty of a Class 1 misdemeanor.

(b) Any notary who takes an acknowledgment or performs a verification or proof without personal knowledge of the signer's identity or without satisfactory evidence of the signer's identity is guilty of a Class 2 misdemeanor.

(c) Any notary who takes an acknowledgment or performs a verification or proof knowing it is false or fraudulent is guilty of a Class I felony.

(d) Any person who knowingly solicits or coerces a notary to commit official misconduct is guilty of a Class 1 misdemeanor. (1991, c. 683, s. 2; 1993, c. 539, ss. 6-8, 1121; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (a) substituted "Class 1 misdemeanor" for "misdemeanor and is punishable by a fine, imprisonment, or both, in the discretion of the court"; in subsection (b) substituted "Class 2 misdemeanor" for "misdemeanor and is punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment not to exceed 60 days, or both"; in subsection (c) substituted "I" for "J"; and in subsection (d) substituted "Class 1 misdemeanor" for "misdemeanor and is punishable by a fine, imprisonment, or both, in the discretion of the court".

Chapter 12.

Statutory Construction.

Sec.
12-3.1. Fees and charges by agencies.

§ 12-3. Rules for construction of statutes.

Legal Periodicals. — For article,"'Original Intention': Raoul Berger's Fake Antique," see 70 N.C.L. Rev. 1523 (1992).

CASE NOTES

I. General Consideration.
II. Determination of Intent and Meaning.
  A. In General.
III. Similar and Related Acts.
  B. Statutes in Pari Materia.
VI. Definitions.

I. GENERAL CONSIDERATION.

The statutory inclusion of certain things implies the exclusion of others. Alford v. Shaw, 327 N.C. 526, 398 S.E.2d 445 (1990).

Quoted in DiDonato v. Wortman, 320 N.C. 423, 358 S.E.2d 489 (1987).

II. DETERMINATION OF INTENT AND MEANING.

A. In General.

When Statute Is Ambiguous. — It is well-settled law in this state that when the language of a statute is unclear or ambiguous, a court may interpret the language of the statute in accordance with what the court presumed the legislature intended. Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

Doctrine of the Last Antecedent. — By what is known as the doctrine of the last antecedent, relative and qualifying words, phrases, and clauses ordinarily are to be applied to the word or phrase immediately preceding and, unless the context indicates a contrary intent, are not to be construed as extending to or including others more remote. HCA Crossroads Residential Ctrs. Inc. v. North Carolina Dep't of Human Resources, 327 N.C. 573, 398 S.E.2d 466 (1990).

Doctrine of last antecedent is not an absolute rule, however, but merely one aid to the discovery of legislative intent. HCA Crossroads Residential Ctrs. Inc. v. North Carolina Dep't of Human Resources, 327 N.C. 573, 398 S.E.2d 466 (1990).

III. SIMILAR AND RELATED ACTS.

B. Statutes in Pari Materia.

Statutes relating to the same subject, etc. —

Statutes relating to the same subject should be construed in pari materia, in such a way as to give effect, if possible, to all provisions without destroying the meaning of the statutes involved. Carolina Truck & Body Co. v. GMC, 102 N.C. App. 262, 402 S.E.2d 135, cert. denied, 329 N.C. 266, 407 S.E.2d 831 (1991).

VI. DEFINITIONS.

Three Calendar Months. — Plaintiff had three calendar months, not 90 days, in which to file an action; thus, the trial court erred in dismissing plaintiff's cause of action based on the statute of limitations. Storey v. Hailey, 114 N.C. App. 173, 441 S.E.2d 602 (1994).

§ 12-3.1. Fees and charges by agencies.

(a) In the construction of a statute, unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute, the legislative grant of authority to an agency to make and promulgate rules shall not be construed as a grant of authority to the agency to establish by rule a fee or a charge for the rendering of any service or fulfilling of any duty to the public, unless the statute expressly provides for the grant of authority to establish a fee or charge for that specific service.

(b) For purposes of this section:

"Agency" means every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the legislative, executive or judicial branches of State government. "Agency" does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, the University of North Carolina, community colleges, hospitals, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

"Rule" means every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency and includes rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

(c) This section does not apply to any of the following:

(1) Rules establishing fees or charges to State, federal or local governmental units.

(2) A reasonable fee or charge for copying, transcripts of public hearings, State publications, or mailing a document or other item.

(3) Reasonable registration fees covering the cost of a conference or workshop.

(4) Reasonable user fees covering the cost of providing data processing services. (1979, c. 559, s. 1; 1981, c. 695, ss. 1, 2; 1987, c. 564, s. 35; 1991, c. 418, s. 6.)

Effect of Amendments. — The 1987 amendment, effective July 6, 1987, substituted "community colleges" for "community colleges, technical institutes, industrial education centers" in subsection (b).

The 1991 amendment, effective October 1, 1991, in subsection (c) inserted "any of the following", added subdivision designations (1) through (4), substituted "Rules" for "rules" in subdivision (c)(1), in subdivision (c)(2) substituted "A" for "nor to any" and inserted "or mailing a document or other item", inserted "Reasonable" in subdivision (c)(3), and substituted "Reasonable" for "or" in subdivision (c)(4).

Chapter 14.

Criminal Law.

SUBCHAPTER I. GENERAL PROVISIONS.

Article 1.

Felonies and Misdemeanors.

Sec.

14-1.1 through 14-2.1. [Repealed.]

14-2.2. Sentencing of a person convicted of a Class A, B, B1, B2, C, D, or E felony who used, displayed, or threatened to use or display a firearm during the commission of the crime; confiscation and disposition of a firearm used in a felony.

14-2.4. (Effective October 1, 1994 — See editor's note) Punishment for conspiracy to commit a felony.

14-2.5. (Effective October 1, 1994 — See editor's note) Punishment for attempt to commit a felony or misdemeanor.

14-2.6. (Effective October 1, 1994 — See editor's note) Punishment for solicitation to commit a felony or misdemeanor.

14-3. (Effective October 1, 1994 — See editor's note) Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ethnic animosity.

Article 2.

Principals and Accessories.

14-5.2. Accessory before fact punishable as principal felon.

Article 2A.

Habitual Felons.

14-7.6. (Effective October 1, 1994 — See editor's note) Sentencing of habitual felons.

Article 2B.

Violent Habitual Felons.

14-7.7. Persons defined as violent habitual felons.

14-7.8. Punishment.

14-7.9. Charge of violent habitual felon.

Sec.

14-7.10. Evidence of prior convictions of violent felonies.

14-7.11. Verdict and judgment.

14-7.12. Sentencing of violent habitual felons.

SUBCHAPTER II. OFFENSES AGAINST THE STATE.

Article 3.

Rebellion.

14-9. [Repealed.]

SUBCHAPTER III. OFFENSES AGAINST THE PERSON.

Article 6.

Homicide.

14-17. (Effective October 1, 1994 — See editor's note) Murder in the first and second degree defined; punishment.

14-18.1. [Repealed.]

14-20. [Repealed.]

Article 7A.

Rape and Other Sex Offenses.

14-27.2. First-degree rape.

14-27.4. First-degree sexual offense.

14-27.6. [Repealed.]

Article 8.

Assaults.

14-32.1. Assaults on handicapped persons; punishments.

14-33. (Effective October 1, 1994 — See editor's note) Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.

14-34.1. (Effective October 1, 1994 — See editor's note) Discharging certain barreled weapons or a firearm into occupied property.

14-34.2. (Effective October 1, 1994 — See editor's note) Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers.

Article 10.

Kidnapping and Abduction.

Sec.
14-42. [Repealed.]
14-43. [Repealed.]

Article 13.

Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material.

14-50. [Repealed.]

SUBCHAPTER IV. OFFENSES AGAINST THE HABITATION AND OTHER BUILDINGS.

Article 14.

Burglary and Other Housebreakings.

14-51.1. Use of deadly physical force against an intruder.
14-67. [Repealed.]

SUBCHAPTER V. OFFENSES AGAINST PROPERTY.

Article 16.

Larceny.

14-72.1. Concealment of merchandise in mercantile establishments.
14-72.3. Removal of shopping cart from shopping premises.
14-72.4. Unauthorized taking or sale of labeled dairy milk cases or milk crates bearing the name or label of owner.
14-78.1. [Repealed.]
14-80. [Repealed.]
14-82. Taking horses, mules, or dogs for temporary purposes.
14-86. [Repealed.]
14-89. [Repealed.]

Article 18.

Embezzlement.

14-95. [Repealed.]

Article 19.

False Pretenses and Cheats.

14-111. [Repealed.]

Article 20.

Frauds.

14-116. [Repealed.]
14-117.1. [Repealed.]

SUBCHAPTER VI. CRIMINAL TRESPASS.

Article 22.

Damages and Other Offenses to Land and Fixtures.

Sec.
14-133. [Repealed.]
14-138. [Repealed.]
14-140. [Repealed.]

Article 23.

Trespasses to Personal Property.

14-161. [Repealed.]
14-164. [Repealed.]

Article 25.

Regulating the Leasing of Storage Batteries.

14-170 through 14-176. [Repealed.]

SUBCHAPTER VII. OFFENSES AGAINST PUBLIC MORALITY AND DECENCY.

Article 26.

Offenses against Public Morality and Decency.

14-195. [Repealed.]
14-200, 14-201. [Repealed.]

SUBCHAPTER VIII. OFFENSES AGAINST PUBLIC JUSTICE.

Article 28.

Perjury.

14-212. [Repealed.]

Article 30.

Obstructing Justice.

14-222. [Repealed.]
14-225. (Effective October 1, 1994 — See editor's note) False reports to law enforcement agencies or officers.

Article 31.

Misconduct in Public Office.

14-235. [Repealed.]
14-253. (Effective October 1, 1994 — See editor's note) Failure of certain railroad officers to account with successors.

Article 33.

Prison Breach and Prisoners.

14-257. [Repealed.]

SUBCHAPTER IX. OFFENSES AGAINST THE PUBLIC PEACE.

Article 35.

Offenses Against the Public Peace.

Sec.
14-269.1. Confiscation and disposition of deadly weapons.
14-269.2. Weapons on campus or other educational property.
14-269.7. Prohibitions on handguns for minors.
14-270, 14-271. [Repealed.]
14-277.4. Obstruction of health care facilities.

SUBCHAPTER X. OFFENSES AGAINST THE PUBLIC SAFETY.

Article 36.

Offenses Against the Public Safety.

14-285. [Repealed.]

Article 36A.

Riots and Civil Disorders.

14-288.14. Power of chairman of board of county commissioners to extend emergency restrictions imposed in municipality.

SUBCHAPTER XI. GENERAL POLICE REGULATIONS.

Article 37.

Lotteries, Gaming, Bingo and Raffles.

Part 1. Lotteries and Gaming.

14-303. Violation of two preceding sections a misdemeanor.
14-309. Violation made misdemeanor.

Part 2. Bingo and Raffles.

14-309.14. (Effective October 1, 1994 — See editor's note) Beach bingo.

Article 38.

Marathon Dances and Similar Endurance Contests.

14-310 through 14-312. [Repealed.]

Article 39.

Protection of Minors.

14-315. (Effective October 1, 1994 — See editor's note) Selling or giving weapons to minors.

Sec.
14-315.1. Storage of firearms to protect minors.
14-315.2. Warning upon sale or transfer of firearm to protect minor.
14-318.2. (Effective October 1, 1994 — See editor's note) Child abuse a Class 1 misdemeanor.
14-345. [Repealed.]
14-346.1, 14-346.2. [Repealed.]
14-356, 14-357. [Repealed.]

Article 49.

Protection of Livestock Running at Large.

14-368. (Effective October 1, 1994 — See editor's note) Placing poisonous shrubs and vegetables in public places.
14-369. [Repealed.]

Article 52.

Miscellaneous Police Regulations.

14-386. [Repealed.]
14-389. [Repealed.]
14-396, 14-397. [Repealed.]
14-401.5. (Effective October 1, 1994 — See editor's note) Practice of phrenology, palmistry, fortune-telling or clairvoyance prohibited.
14-401.14. (Effective October 1, 1994 — See editor's note) Ethnic intimidation; teaching any technique to be used for ethnic intimidation.
14-410. Manufacture, sale and use of pyrotechnics prohibited; public exhibitions permitted; common carriers not affected.
14-413. Permits for use at public exhibitions.
14-415.3. Possession of a firearm or weapon of mass destruction by persons acquitted of certain crimes by reason of insanity or persons determined to be incapable to proceed prohibited.

Article 60.

Computer-Related Crime.

14-453. Definitions.
14-454. (See note) Accessing computers.
14-455. (See note) Damaging computers, computer systems, computer networks, and resources.

Sec.
14-456. (See note) Denial of computer services to an authorized user.

Editor's Note. — Chapter 24, section 14 of the North Carolina Extra Session amended the effective date provisions of Chapter 538, section 56 and Chapter 539, section 1359 of the 1993 Session Laws by changing the effective date of the changes made by those chapters from January 1, 1995 to October 1, 1994. Many sections in this chapter have been affected by this change.

SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

Felonies and Misdemeanors.

§ 14-1.1: Repealed by Session Laws 1993, c. 538, s. 2, effective October 1, 1994.

Cross References. — As to structured sentencing of persons convicted of crimes, effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. — Session Laws 1993, c. 538, s. 2.1 repeals this section effective October 1, 1994. Section 56 of Session Laws 1993, c. 538, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-2: Repealed by Session Laws 1993, c. 538, s. 2.1, effective October 1, 1994.

Cross References. — As to structured sentencing of persons convicted of crimes, effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. — Session Laws 1993, c. 538, s. 2.1 repeals this section effective October 1, 1994. Section 56 of Session Laws 1993, c. 538, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-2.1: Repealed by Session Laws 1993, c. 538, s. 3, effective October 1, 1994.

Cross References. — As to structured sentencing of persons convicted of crimes, effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. — Session Laws 1993, c. 538, s. 3 repeals this section effective October 1, 1994. Section 56 of Session Laws 1993, c. 538, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-2.2. Sentencing of a person convicted of a Class A, B, B1, B2, C, D, or E felony who used, displayed, or threatened to use or display a firearm during the commission of the crime; confiscation and disposition of a firearm used in a felony.

(a) If a person is convicted of a Class A, B, B1, B2, C, D, or E felony and the person used, displayed, or threatened to use or display a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 60 months as provided by G.S. 15A-1340.16A.

The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the person.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

(1) The person is not sentenced to an active term of imprisonment.

(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B, B1, B2, C, D, or E felony.

(3) The person did not actually possess a firearm about his or her person.

(c) When a person is found to have personally used a firearm in the commission or attempted commission of a felony and the firearm is owned by that person, or the serial number on the firearm has been defaced such that ownership is not traceable, the court shall order that the firearm be confiscated and disposed of in any of the ways provided by G.S. 14-269.1 that the court in its discretion deems appropriate.

(d) Repealed by Session Laws 1994, Extra Session, c. 22, s. 19(b), effective October 1, 1994. (1979, c. 760, s. 2; 1979, 2nd Sess., c. 1316, ss. 34, 47, 48; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 538, s. 4; 1994, Ex. Sess., c. 22, ss. 18, 19(a), (b).)

Editor's Note. —

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 19(c) repealed Session Laws 1993, c. 538, s. 4, which as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), would have repealed this section effective October 1, 1994.

Subsection (a) was amended by Session Laws 1994, Extra Session, c. 22, s. 19(a), in the coded bill drafting format provided by § 120-20.1. Without engrossing the amendment added a sentence to the end of the first paragraph in subsection (a) which read "Evidence of the use, display, or threatened use or display of a firearm that is needed to prove an element of the underlying felony shall not be used to establish the enhancement under this section." This language is similar to present subsection (b)(2). The section has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1

provides: "This act shall be known as the Crime Control Act of 1994."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 24 provides: "Prosecution for, or sentences based on, offenses committed before the effective dates of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1994 Extra Session amendment by c. 22, s. 18, effective May 1, 1994, and applicable to offenses committed on or after that date, rewrote this section.

The 1994 Extra Session amendment by c. 22, s. 19(a) and (b), effective on the date that Section 56 of Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses committed on or after that date, in subsection (a) substituted "a minimum term of imprisonment for 60 months as provided by G.S. 15A-1340.16A" for "imprisonment for five years" in the first paragraph, and deleted the first sentence of the second paragraph, which read "The court shall not sentence a person sentenced under this section as a committed youthful offender," and repealed subsection (d), relating to applicability of subsection (a).

§ 14-2.4. (Effective October 1, 1994 — See editor's note) Punishment for conspiracy to commit a felony.

(a) Unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a felony is guilty of a felony that is one class lower than the felony he or she conspired to commit, except that a conspiracy to commit a Class A or Class B1 felony is a Class B2 felony, a conspiracy to commit a Class B2 felony is a Class C felony, and a conspiracy to commit a Class I felony is a Class 1 misdemeanor.

(b) Unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a misdemeanor is guilty of a misdemeanor that is one class lower than the misdemeanor he or she conspired to commit, except that a conspiracy to commit a Class 3 misdemeanor is a Class 3 misdemeanor. (1983, c. 451, s. 1; 1993, c. 538, s. 5; 1994, Ex. Sess., c. 22, s. 12; c. 24, s. 14(b).)

Editor's Note. — Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 14 provides: "This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994], and applies to offenses occurring on or after the effective date of this Part. Prosecution for offenses occurring before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Effect of Amendments. —

The 1994 Extra Session amendment by c. 22, s. 12, effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, inserted "Class A or Class B1 felony is a Class B2 felony, a conspiracy to commit a Class B2 felony is a Class C felony, and a conspiracy to commit a" in subsection (a).

§ 14-2.5. (Effective October 1, 1994 — See editor's note) Punishment for attempt to commit a felony or misdemeanor.

Unless a different classification is expressly stated, an attempt to commit a misdemeanor or a felony is punishable under the next lower classification as the offense which the offender attempted to commit. An attempt to commit a Class A or Class B1 felony is a Class B2 felony, an attempt to commit a Class B2 felony is a Class C felony, an attempt to commit a Class I felony is a Class 1 misdemeanor, and an attempt to commit a Class 3 misdemeanor is a Class 3 misdemeanor. (1993, c. 538, s. 6; 1994, Ex. Sess., c. 22, s. 11; c. 24, s. 14(b).)

Editor's Note. — Session Laws 1993, c. 538, which enacted this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 14 provides: "This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994], and applies to offenses occurring on or after the effective date of this Part. Prosecution for offenses occurring before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Effect of Amendments. — The 1994 Extra Session amendment by c. 22, s. 11, effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, inserted "Class A or Class B1 felony is a Class B2 felony, an attempt to commit a Class B2 felony is a Class C felony, an attempt to commit a" in the second sentence.

§ 14-2.6. (Effective October 1, 1994 — See editor's note) Punishment for solicitation to commit a felony or misdemeanor.

(a) Unless a different classification is expressly stated, a person who solicits another person to commit a felony is guilty of a felony that is two classes lower than the felony the person solicited the other person to commit, except that a solicitation to commit a Class A or Class B1 felony is a Class C felony, a solicitation to commit a Class B2 felony is a Class D felony, a solicitation to commit a Class H felony is a Class 1 misdemeanor, and a solicitation to commit a Class I felony is a Class 2 misdemeanor.

(b) Unless a different classification is expressly stated, a person who solicits another person to commit a misdemeanor is guilty of a Class 3 misdemeanor. (1993, c. 538, s. 6.1; 1994, Ex. Sess., c. 22, s. 13; c. 24, s. 14(b).)

Editor's Note. — Session Laws 1993, c. 538, which enacted this section, in s. 56, effective October 1, 1994, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 14 provides: "This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994], and applies to offenses occurring on or after the effective date of this Part. Prosecution for offenses occurring before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Effect of Amendments. — The 1994 Extra Session amendment by c. 22, s. 13, effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, inserted "a Class A or Class B1 felony is a Class C felony, a solicitation to commit a Class B2 felony is a Class D felony, a solicitation to commit" in subsection (a).

§ 14-3. (Effective October 1, 1994 — See editor's note) Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ethnic animosity.

(a) Except as provided in subsections (b) and (c), every person who shall be convicted of any misdemeanor for which no specific classification and no specific punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor. Any misdemeanor that has a specific punishment, but is not assigned a classification by the General Assembly pursuant to law is classified as follows, based on the maximum punishment allowed by law for the offense as it existed on the effective date of Article 81B of Chapter 15A of the General Statutes:

(1) If that maximum punishment is more than six months imprisonment, it is a Class 1 misdemeanor;
(2) If that maximum punishment is more than 30 days but not more than six months imprisonment, it is a Class 2 misdemeanor; and
(3) If that maximum punishment is 30 days or less imprisonment or only a fine, it is a Class 3 misdemeanor.

Misdemeanors that have punishments for one or more counties or cities pursuant to a local act of the General Assembly that are different from the generally applicable punishment are classified pursuant to this subsection if not otherwise specifically classified.

(b) If a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a Class H felony.

(c) If any Class 2 or Class 3 misdemeanor is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class 1 misdemeanor. If any Class 1 misdemeanor offense is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class I felony. (R.C., c. 34, s. 120; Code, s. 1097; Rev., s. 3293; C.S., s. 4173; 1927, c. 1; 1967, c. 1251, s. 3; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, ss. 2, 47, 48; 1981, c. 63, s. 1; c. 179, s. 14; 1991, c. 702, s. 2; 1993, c. 538, s. 7; 1994, Ex. Sess., c. 14, s. 2; c. 24, s. 14(b).)

Editor's Note. —

Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1994 Extra Session amendment by c. 14, s. 2, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Statutes:" for "Statutes." at the end of the introductory language of subdivision (a)(1).

CASE NOTES

I. General Consideration.
III. Particular Offenses.

I. GENERAL CONSIDERATION.

Failure to Instruct on Lesser-Included Offense. — Where there was substantial evidence which would have supported a reasonable finding that defendant committed the lesser-included offense of attempted murder, the trial court erred in failing to instruct the jury on the lesser-included offense of attempted murder. State v. Collins, 334 N.C. 54, 431 S.E.2d 188 (1993).

Cited in State v. Sullivan, 110 N.C. App. 779, 431 S.E.2d 502 (1993).

III. PARTICULAR OFFENSES.

An attempt to commit murder is an infamous misdemeanor specifically elevated by subsection (b) to the status of a Class H felony. State v. Collins, 334 N.C. 54, 431 S.E.2d 188 (1993).

§ 14-4. (See editor's note for date change) Violation of local ordinances misdemeanor.

Editor's Note. —

Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1993, c. 539, which

amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 2.

Principals and Accessories.

§ 14-5.2. Accessory before fact punishable as principal felon.

All distinctions between accessories before the fact and principals to the commission of a felony are abolished. Every person who heretofore would have been guilty as an accessory before the fact to any felony shall be guilty and punishable as a principal to that felony. However, if a person who heretofore would have been guilty and punishable as an accessory before the fact is convicted of a capital felony, and the jury finds that his conviction was based solely on the uncorroborated testimony of one or more principals, coconspirators, or accessories to the crime, he shall be guilty of a Class B2 felony. (1981, c. 686, s. 1; 1994, Ex. Sess., c. 22, s. 6.)

Editor's Note. — Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 14 provides: "This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applies to offenses occurring on or after the effective date of this Part. Prosecution for offenses occurring before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Effect of Amendments. — The 1994 Extra Session amendment by c. 22, s. 6, effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after the effective date substituted "Class B2 felony" for "Class B felony" in the last sentence.

CASE NOTES

II. Elements of the Offense.

II. ELEMENTS OF THE OFFENSE.

Where crimes of intent are involved, the accused accessory typically did or said something which would tend to show that he at least anticipated that the plan he encouraged might lead to the "consequential" crime in question; once an accessory before the fact has counseled, procured or planned a criminal event, he must answer for all crimes flowing from the accomplished event. State v. Marr, 113 N.C. App. 774, 440 S.E.2d 275 (1994).

§ 14-7. Accessories after the fact; trial and punishment.

CASE NOTES

Cited in State v. Brown, 335 N.C. 477, 440 S.E.2d 98 (1994).

ARTICLE 2A.

Habitual Felons.

§ 14-7.1. Persons defined as habitual felons.

CASE NOTES

Persons Intended to Be Affected. — The manifest intent of the General Assembly in enacting the Habitual Felon Act was to insure lengthier sentences for those persons who repeatedly violate the criminal laws of this State. Nowhere in the Act is there any indication that the Act was intended to apply only to those persons who repeatedly violate the same criminal law, and the court declined to write any such requirement into the law. State v. Hodge, 112 N.C. App. 462, 436 S.E.2d 251 (1993).

Notice to Defendant of Habitual Offender Allegation Required Before Plea. — Defendant must have notice of the allegation of habitual felon status at the time of his plea to the underlying substantive felony charge. State v. Oakes, 113 N.C. App. 332, 438 S.E.2d 477 (1994).

§ 14-7.3. Charge of habitual felon.

CASE NOTES

Separate Indictments Valid. — This section does not require that the indictment charging defendant with the underlying felony must also charge that defendant is an habitual felon; where defendant was charged in one bill of indictment with felonious possession of cocaine, and in a separate bill of indictment with being an habitual felon, the indictments were not invalid. State v. Hodge, 112 N.C. App. 462, 436 S.E.2d 251 (1993).

New Indictment. — Where there had been no entry of judgment or sentence as to the substantive underlying felony, until judgment was entered upon defendant's conviction of that substantive underlying felony, there remained a pending, uncompleted felony prosecution to which a new habitual felon indictment could attach. State v. Oakes, 113 N.C. App. 332, 438 S.E.2d 477 (1994).

Indictment Held Sufficient. — Habitual felon indictment complied with this section. State v. Smith, 112 N.C. App. 512, 436 S.E.2d 160 (1993).

Cited in State v. Hawkins, 110 N.C. App. 837, 431 S.E.2d 503 (1993).

§ 14-7.4. Evidence of prior convictions of felony offenses.

CASE NOTES

Names Held to Be "Same Name". — Where the documents introduced to prove defendant's prior conviction for breaking and entering were all identified as accurate copies of the originals, and each of the documents indicated that defendant's name was "Michael Hodge," for purposes of this section "Michael Hodge" and "William Michael Hodge" were the same name, and the documents at issue therefore constituted prima facie evidence that the defendant named in the prior case was the same as the defendant before the court. State v. Hodge, 112 N.C. App. 462, 436 S.E.2d 251 (1993).

§ 14-7.5. Verdict and judgment.

CASE NOTES

Pending, Uncompleted Felony Conviction Required. — Where there had been no entry of judgment or sentence as to the substantive underlying felony, until judgment was entered upon defendant's conviction of that substantive underlying felony, there remained a pending, uncompleted felony prosecution to which a new habitual felon indictment could attach. State v. Oakes, 113 N.C. App. 332, 438 S.E.2d 477 (1994).

New Habitual Felon Indictment Did Not Result in Former Jeopardy. — Although habitual felon indictment was joined for trial with one underlying charge, the indictment was quashed before defendant was placed on trial upon the charge that he was an habitual felon. The subsequent indictment alleging defendant's status as an habitual felon was still part of, and ancillary to, the prosecution of defendant for an underlying felony, for which no judgment had been entered, and there was no former jeopardy. State v. Oakes, 113 N.C. App. 332, 438 S.E.2d 477 (1994).

Cited in State v. Sullivan, 111 N.C. App. 441, 432 S.E.2d 376 (1993).

§ 14-7.6. (Effective October 1, 1994 — See editor's note) Sentencing of habitual felons.

When an habitual felon as defined in this Article commits any felony under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced as a Class C felon. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section. (1967, c. 1241, s. 6; 1981, c. 179, s. 13; 1993, c. 538, s. 9; 1994, Ex. Sess., c. 22, ss. 15, 16; c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, s. 16.)

Editor's Note. — Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This Act shall be known as the Crime Control Act of 1994."

The 1994 Extra Session c. 22, which amended this section, in s. 17 provides: "This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994], and applies to offenses committed on or after that date. Prosecution for, or sentences based on, offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 22, s. 16, effective October 1, 1994, repeals Session Laws 1993, c. 538, s. 9, which, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), would have amended this section effective October 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1994 Extra Session amendment by c. 22 s. 15, effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses committed on or after that date, in the first sentence substituted "commits" for "shall commit", and substituted "provided in this Article" for "herein provided"; added the second sentence; deleted the former second, third and fourth sentences regarding seven year minimum term, good time credit, and suspension of sentences; and substituted "under this section" for "hereunder" at the end of the last sentence.

The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "the felon has been sentenced as a Class A, B1, or B2 felon)" for "the death penalty or a sentence of life imprisonment is imposed)."

CASE NOTES

Cited in State v. Hodge, 112 N.C. App. 462, 436 S.E.2d 251 (1993).

ARTICLE 2B.

Violent Habitual Felons.

§ 14-7.7. Persons defined as violent habitual felons.

(a) Any person who has been convicted of two violent felonies in any federal court, in a court of this or any other state of the United States, or in a combination of these courts is declared to be a violent habitual felon. For purposes of this Article, "convicted" means the person has been adjudged guilty of or has entered a plea of guilty or no contest to the violent felony charge, and judgment has been entered thereon when such action occurred on or after July 6, 1967. This Article does not apply to a second violent felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony. Any felony to which a pardon has been extended shall not, for the purposes of this Article, constitute a felony. The burden of proving a pardon shall rest with the defendant, and this State shall not be required to disprove a pardon. Conviction as an habitual felon shall not, for purposes of this Article, constitute a violent felony.

(b) For purposes of this Article, "violent felony" includes the following offenses:

(1) All Class A through E felonies.

(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).

(3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2). (1994, Ex. Sess., c. 22, ss. 31, 32.)

Editor's Note. — Session Laws 1994, Extra Session, c. 22, s. 37 makes this Article effective May 1, 1994.

Session Laws 1994, Extra Session, c. 22, s. 1, effective May 1, 1994, provides: "This Act shall be known as the Crime Control Act of 1994."

Session Laws 1994, Extra Session, c. 22, s. 37, effective May 1, 1994, provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this Part are not abated or affected by the repeal or amendment in this Part of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences."

Effect of Amendments. — Session Laws 1994, Extra Session, c. 22, s. 32, effective on the date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), rewrote subsection (b) of this section as enacted by Session Laws 1994, Extra Session, c. 22, s. 31.

§ 14-7.8. Punishment.

When a person is charged by indictment with the commission of a violent felony and is also charged with being a violent habitual felon as defined in G.S. 14-7.7, the person must, upon conviction, be sentenced in accordance with this Article, except in those cases where the death penalty is imposed. (1994, Ex. Sess., c. 22, s. 31.)

§ 14-7.9. Charge of violent habitual felon.

An indictment that charges a person who is a violent habitual felon within the meaning of G.S. 14-7.7 with the commission of any violent felony must, in order to sustain a conviction of violent habitual felon, also charge that the person is a violent habitual felon. The indictment charging the defendant as a violent habitual felon shall be separate from the indictment charging the defendant with the principal violent felony. An indictment that charges a person with being a violent habitual felon must set forth the date that prior violent felonies were committed, the name of the state or other sovereign against whom the violent felonies were committed, the dates of convictions of the violent felonies, and the identity of the court in which the convictions took place. A defendant charged with being a violent habitual felon in a bill of indictment shall not be required to go to trial on that charge within 20 days after the finding of a true bill by the grand jury unless the defendant waives this 20-day period. (1994, Ex. Sess., c. 22, s. 31.)

§ 14-7.10. Evidence of prior convictions of violent felonies.

In all cases where a person is charged under this Article with being a violent habitual felon, the records of prior convictions of violent felonies shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of former violent felonies. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court, and shall be prima facie evidence of the facts set out therein. (1994, Ex. Sess., c. 22, s. 31.)

§ 14-7.11. Verdict and judgment.

When an indictment charges a violent habitual felon with a violent felony as provided in this Article and an indictment also charges that the person is a violent habitual felon as provided in this Article, the defendant shall be tried for the principal violent felony as provided by law. The indictment that the person is a violent habitual felon shall not be revealed to the jury unless the jury finds that the defendant is guilty of the principal violent felony or another violent felony with which the defendant is charged. If the jury finds the defendant guilty of a violent felony, the bill of indictment charging the defendant as a violent habitual felon may be presented to the same jury. Except that the same jury may be used, the proceedings shall be as if the issue of violent habitual felon were a principal charge. If the jury finds that the defendant is a violent habitual felon, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not a violent habitual felon, the trial judge shall pronounce judgment on the principal violent felony or felonies as provided by law. (1994, Ex. Sess., c. 22, s. 31.)

§ 14-7.12. Sentencing of violent habitual felons.

A person who is convicted of a violent felony and of being a violent habitual felon must, upon conviction (except where the death penalty is imposed), be sentenced to life imprisonment without parole. Life imprisonment without parole means that the person will spend the remainder of the person's natural life in prison. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences for violent habitual felons imposed under this Article shall run consecutively with and shall commence at the expiration of any other sentence being served by the person. (1994, Ex. Sess., c. 22, s. 31.)

SUBCHAPTER II. OFFENSES AGAINST THE STATE.

Article 3.

Rebellion.

§ 14-8. (Effective October 1, 1994 — See editor's note) Rebellion against the State.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this

act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-9: Repealed by Session Laws 1994, Extra Session, c. 14, s. 71(1), effective October 1, 1994.

Cross References. — As to structured sentencing of persons convicted of crimes, effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-10. (Effective October 1, 1994 — See editor's note) Secret political and military organizations forbidden.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 4.

Subversive Activities.

§ 14-12. (Effective October 1, 1994 — See editor's note) Punishment for violations.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 4A.

Prohibited Secret Societies and Activities.

§ 14-12.15. (Effective October 1, 1994 — See editor's note) Punishment for violation of Article.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 5.

Counterfeiting and Issuing Monetary Substitutes.

§ 14-13. (Effective October 1, 1994 — See editor's note) Counterfeiting coin and uttering coin that is counterfeit.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-14. (Effective October 1, 1994 — See editor's note) Possessing tools for counterfeiting.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-15. (Effective October 1, 1994 — See editor's note) Issuing substitutes for money without authority.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-16. (Effective October 1, 1994 — See editor's note) Receiving or passing unauthorized substitutes for money.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 5A.

Endangering Executive and Legislative Officers.

§ 14-16.6. (Effective October 1, 1994 — See editor's note) Assault on executive or legislative officer.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-16.7. (Effective October 1, 1994 — See editor's note) Threats against executive or legislative officers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER III. OFFENSES AGAINST THE PERSON.

ARTICLE 6.

Homicide.

§ 14-17. (Effective October 1, 1994 — See editor's note) Murder in the first and second degree defined; punishment.

A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(a)4., when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon. (1893, cc. 85, 281; Rev., s. 3631; C.S., s. 4200; 1949, c. 299, s. 1; 1973, c. 1201, s. 1; 1977, c. 406, s. 1; 1979, c. 682, s. 6; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1251, ss. 1, 2; c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; c. 662, s. 1; 1987, c. 693; 1989, c. 694; 1993, c. 539, s. 112; 1994, Ex. Sess., c. 21, s. 1; c. 22, s. 4; c. 24, s. 14(c).)

Cross References. — As to provisions regarding transfer to superior court, see § 7A-608. As to provisions regarding controlled substances, see § 90-90.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 21, which amended this section, in s. 8 provides: "This act becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994], and applies to offenses occurring on or after that date. Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal, expiration, or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 14 provides: "This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994]. This Part applies to offenses occurring on or after the effective date of this Part. Prosecutions for offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Effect of Amendments. —

Session Laws 1994, Extra Session, c. 21, s. 1, effective on the date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, inserted "without parole" following "life" twice in the first sentence, and once in the second sentence.

Session Laws 1994, Extra Session, c. 22, s. 4, effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class B2 felon" for "Class B felon" in the last sentence.

CASE NOTES

I. General Consideration.
II. Murder in the First Degree Generally.
III. Murder by Means Stated in Section.
IV. Murder in Perpetration of a Felony.
V. Murder in the Second Degree.
VII. Evidence.
  A. In General.

I. GENERAL CONSIDERATION.

Stated in State v. Cook, 334 N.C. 564, 433 S.E.2d 730 (1993).

Cited in State v. Stanley, 110 N.C. App. 87, 429 S.E.2d 349 (1993); State v. Collins, 334 N.C. 54, 431 S.E.2d 188 (1993); State v. Howard, 334 N.C. 602, 433 S.E.2d 742 (1993); State v. Barber, 335 N.C. 120, 436 S.E.2d 106 (1993).

II. MURDER IN THE FIRST DEGREE GENERALLY.

Evidence Held Sufficient to Raise Inference of Premeditation and Deliberation. — Where the evidence, taken in the light most favorable to the State, showed that no knives or other weapons were found at the scene of the crime and no drawers were open; the victim was shot three times, once in the back; prior to the day of the shooting, defendant threatened, "If I ever come here and see another man in this house, I'll kill him"; and after the shooting, defendant told lieutenant that he had shot two people but did not at that time claim that he had done so in self-defense; this evidence raised the legitimate inference that defendant killed with premeditation and deliberation and not in self-defense, and the trial court did not err in submitting the first-degree murder charge based on premeditation and deliberation. State v. Carter, 335 N.C. 422, 440 S.E.2d 268 (1994).

III. MURDER BY MEANS STATED IN SECTION.

A murder perpetrated by means of poison is murder in the first degree, etc. —

When a murder is committed by means of poison, premeditation and deliberation are not elements of the crime of first-degree murder and premeditation and deliberation are hence irrelevant. State v. Moore, 335 N.C. 567, 440 S.E.2d 797 (1994).

IV. MURDER IN PERPETRATION OF A FELONY.

Unbroken Chain of Events Is Required. —

In felony murder, the killing may, but need not, be intentional. There must, however, be an unbroken chain of events leading from the attempted felony to the act causing death, so that the homicide is part of a series of events forming one continuous transaction. State v. Gibbs, 335 N.C. 1, 436 S.E.2d 321 (1993).

V. MURDER IN THE SECOND DEGREE.

No Evidence to Warrant Instruction on Second-Degree Murder. — Where the jury returned a verdict that defendant was guilty of first-degree murder under the felony-murder rule and not of premeditated and deliberated murder, no evidence in the record warranted submission of an instruction on second-degree murder. State v. Oliver, 334 N.C. 513, 434 S.E.2d 202 (1993).

Jury Question Warranted. — Sufficient evidence was found to allow the issue of defendant's guilt of second-degree murder to be submitted to the jury. State v. Hester, 111 N.C. App. 110, 432 S.E.2d 171 (1993).

Evidence Held Sufficient. —
While evidence tended to show that defendant may have killed her husband, it did not necessarily lead to the conclusion that defendant first premeditated and deliberated his death; thus, the evidence supported a finding of second-degree murder. State v. Webster, 111 N.C. App. 72, 431 S.E.2d 808, cert. denied, 335 N.C. 180, 438 S.E.2d 206 (1993).

VII. EVIDENCE.

A. In General.

Sufficiency of Evidence Sufficient to Deny Motion to Dismiss. — Evidence tending to show defendant was the perpetrator of the homicide was sufficient to justify the trial court's denial of defendant's motion to dismiss. State v. Demery, 113 N.C. App. 58, 437 S.E.2d 704 (1993).

§ 14-18. (Effective October 1, 1994 — See editor's note) Punishment for manslaughter.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-18.1: Repealed by Session Laws 1994, Extra Session, c. 14, s. 73, effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-20: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 29(1), effective October 1, 1994.

Cross References. — For structured sentencing provisions effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. — Repealed § 14-20 would have been amended by Session Laws 1994, Extra Session, c. 22, s. 5, effective October 1, 1994. Because of the repeal, the amendment is not set out.

ARTICLE 7A.

Rape and Other Sex Offenses.

§ 14-27.2. First-degree rape.

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony. (1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 4; 1981, c. 63; c. 106, ss. 1, 2; c. 179, s. 14; 1983, c. 175, ss. 4, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 2.)

Editor's Note. —

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 14 provides: "This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994]. This Part applies to offenses occurring on or after the effective date of this Part. Prosecutions for offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective October 1, 1994 substituted "Class B1 felony" for "Class B felony" in subsection (b).

Legal Periodicals. —

For comment, "Old Wine in New Bottles: The 'Marital' Rape Allowance," see 72 N.C.L. Rev. 261 (1993).

CASE NOTES

I. General Consideration.
II. Indictment.
VIII. Serious Personal Injury.
XIII. Evidence.
XIV. Instructions.

I. GENERAL CONSIDERATION.

Elements Required. — In order to prove first-degree rape, it is sufficient that the State demonstrate that the defendant engaged in vaginal intercourse with another person by force and against the will of the other person and either (1) employed or displayed a dangerous weapon or (2) inflicted serious personal injury upon the victim or another person. State v. Worsley, 336 N.C. 268, 443 S.E.2d 68 (1994).

Cited in State v. Hutchens, 110 N.C. App. 455, 429 S.E.2d 755 (1993); State v. McClain, 112 N.C. App. 208, 435 S.E.2d 371 (1993); State v. Green, 336 N.C. 142, 443 S.E.2d 14 (1994).

II. INDICTMENT.

Failure of Indictment to Allege Date of Crime. — Because time did not constitute an element of first-degree rape, time was not of the essence of the crime; accordingly, in a case where the failure of the indictments to allege any date on which the offenses occurred would not be grounds for dismissal of the charges, the designation of a two-year period was not grounds for dismissal. State v. McKinney, 110 N.C. App. 365, 430 S.E.2d 300, appeal dismissed, cert. denied, 334 N.C. 437, 433 S.E.2d 182 (1993).

VIII. SERIOUS PERSONAL INJURY.

But Must Be Greater Than That Present in Every Rape. —

In order to prove a serious personal injury based on mental or emotional harm there is no requirement that the mental injury arise from an action not ordinarily present in a forcible rape; what is required is that the mental injury extend for some appreciable time beyond the incidents surrounding the rape and that it is a mental injury beyond that normally experienced in every forcible rape. State v. Baker, 336 N.C. 58, 441 S.E.2d 551 (1994).

Sufficiency of Evidence. —

The mental injuries at issue extended for some appreciable time beyond the incidents surrounding the crime itself where the victim experienced weight loss for ten months after the rape; 12 months after the rape, she was still experiencing depression, was unable to sleep, and did not feel comfortable interacting with the public; the victim had quit work, moved from her home, and sought counseling; and after the rape, the victim was unable to carry out her role as a mother and had to give up her child to the child's grandmother for care for nine months. State v. Baker, 336 N.C. 58, 441 S.E.2d 551 (1994).

XIII. EVIDENCE.

Evidence Held Sufficient. —

There was sufficient evidence from which a rational trier of fact could find in the present case that the defendant engaged in vaginal intercourse with victim by force and against her will while either employing a dangerous weapon or inflicting serious personal injury upon her. State v. Worsley, 336 N.C. 268, 443 S.E.2d 68 (1994).

XIV. INSTRUCTIONS.

When Charge of Attempted Rape Not Required. —

Where defendant's confession was the only evidence introduced at trial establishing his participation in the gang rape of an 11-year old victim, the trial court correctly refused to instruct the jury on attempted rape. State v. Brown, 112 N.C. App. 390, 436 S.E.2d 163 (1993), cert. denied, 335 N.C. 561, 441 S.E.2d 124 (1994).

Instruction on Lesser-Included Offense Properly Denied. — Where both defendant and the victim agreed that weapons were displayed during the altercation, and the only fact in dispute was whether the sex was consensual; the trial court correctly denied the instruction to charge on a lesser-included offense. State v. Mustafa, 113 N.C. App. 240, 437 S.E.2d 906 (1994).

§ 14-27.3. (See editor's note for date change) Second-degree rape.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Cited in State v. Black, 111 N.C. App. 284, 432 S.E.2d 710 (1993); State v. Futrell, 112 N.C. App. 651, 436 S.E.2d 884 (1993); State v. Green, 336 N.C. 142, 443 S.E.2d 14 (1994).

§ 14-27.4. First-degree sexual offense.

(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony. (1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 6; 1981, c. 63; c. 106, ss. 3, 4; c. 179, s. 14; 1983, c. 175, ss. 5, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 3.)

Editor's Note. —

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 14 provides: "This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994]. This Part applies to offenses occurring on or after the effective date of this Part. Prosecutions for offenses committed before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class B1 felony" for "Class B felony" in subsection (b).

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Cited in Messick v. Catawba County, 110 N.C. App. 707, 431 S.E.2d 489; State v. McClain, 112 N.C. App. 208, 435 S.E.2d 371 (1993).

§ 14-27.5. (See editor's note for date change) Second-degree sexual offense.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-27.6: Repealed by Session Laws 1994, Extra Session, c. 14, s. 71(3), effective October 1, 1994.

§ 14-27.7. (Effective October 1, 1994 — See editor's note) Intercourse and sexual offenses with certain victims; consent no defense.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-27.8. No defense that victim is spouse of person committing act.

Legal Periodicals. — For comment, "Old Wine in New Bottles: The 'Marital' Rape Allowance," see 72 N.C.L. Rev. 261 (1993).

ARTICLE 8.

Assaults.

§ 14-28. (Effective October 1, 1994 — See editor's note) Malicious castration.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-29. (Effective October 1, 1994 — See editor's note) Castration or other maiming without malice aforethought.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-30. (Effective October 1, 1994 — See editor's note) Malicious maiming.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-30.1. (Effective October 1, 1994 — See editor's note) Malicious throwing of corrosive acid or alkali.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-31. (Effective October 1, 1994 — See editor's note) Maliciously assaulting in a secret manner.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Quoted in State v. Almond, 112 N.C. App. 137, 435 S.E.2d 91 (1993).

§ 14-32. (Effective October 1, 1994 — See editor's note) Felonious assault with deadly weapon with intent to kill or inflicting serious injury; punishments.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. General Consideration.
III. Elements of Offense.
IX. Instructions to Jury.

I. GENERAL CONSIDERATION.

Stated in Alt v. Parker, 112 N.C. App. 307, 435 S.E.2d 773 (1993).

Cited in State v. Daniel, 333 N.C. 756, 429 S.E.2d 724 (1993); State v. Degree, 110 N.C. App. 638, 430 S.E.2d 491 (1993); State v. Moore, 111 N.C. App. 649, 432 S.E.2d 887 (1993).

III. ELEMENTS OF OFFENSE.

In order for a conviction of crime under the provisions of this section, etc. —
In accord with third paragraph in main volume. See State v. Reid, 335 N.C. 647, 440 S.E.2d 776 (1994).

IX. INSTRUCTIONS TO JURY.

Failure to Submit Lesser Offense Held Not Error. —
In trial for first-degree burglary, felonious breaking and entering, assault with a deadly weapon with intent to kill inflicting serious injury, and assault with a deadly weapon with intent to kill, where the only evidence which would negate the intent to kill was the defendant's denial that he would have killed victim, the trial court's refusal to submit a jury instruction on the lesser offenses of misdemeanor assault with a deadly weapon and misdemeanor breaking and entering was not error. State v. Owen, 111 N.C. App. 300, 432 S.E.2d 378 (1993).

Where all the evidence tended to show a shooting with a deadly weapon with the intent to kill, the trial court did not err in refusing to submit the lesser offense of assault with a deadly weapon inflicting serious injury. State v. Oliver, 334 N.C. 513, 434 S.E.2d 202 (1993).

Instruction on "Reasonable Doubt". — Trial court's instruction in defendant's trial for the lesser included offense of assault with a deadly weapon inflicting serious injury defining for the jury the term "reasonable doubt" was unconstitutional (superseding previous opinion). State v. Williams, 111 N.C. App. 861, 434 S.E.2d 238, cert. denied, 335 N.C. 180, 438 S.E.2d 207 (1993).

§ 14-32.1. Assaults on handicapped persons; punishments.

(a) For purposes of this section, a "handicapped person" is a person who has:

(1) A physical or mental disability, such as decreased use of arms or legs, blindness, deafness, mental retardation or mental illness; or

(2) Infirmity

which would substantially impair that person's ability to defend himself.

(b) through (d) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 31, effective October 1, 1994.

(e) **(Effective October 1, 1994 — See editor's note)** Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any aggravated assault or assault and battery on a handicapped person is guilty of a Class F felony. A person commits an aggravated assault or assault and battery upon a handicapped person if, in the course of the assault or assault and battery, that person:

(1) Uses a deadly weapon or other means of force likely to inflict serious injury or serious damage to a handicapped person; or
(2) Inflicts serious injury or serious damage to a handicapped person; or
(3) Intends to kill a handicapped person.

(f) **(Effective October 1, 1994 — See editor's note)** Any person who commits a simple assault or battery upon a handicapped person is guilty of a Class 1 misdemeanor. (1981, c. 780, s. 1; 1993, c. 539, ss. 15, 1139; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 767, s. 31.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, deleted former subsections (b), (c), and (d), regarding Class C and Class E felonies.

§ 14-32.2. (See editor's note for date change) Patient abuse and neglect; punishments.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-33. (Effective October 1, 1994 — See editor's note) Misdemeanor assaults, batteries, and affrays, simple and aggravated; punishments.

(a) Any person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 1 misdemeanor.

(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a Class 1 misdemeanor if, in the course of the assault, assault and battery, or affray, he:

(1) Inflicts, or attempts to inflict, serious injury upon another person or uses a deadly weapon;

(2) Assaults a female, he being a male person at least 18 years of age;

(3) Assaults a child under the age of 12 years;

(4) through (7) Repealed by Session Laws 1991, c. 525, s. 1;

(8) Assaults an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 17C or Chapter 116 of the General Statutes, when the officer or employee is discharging or attempting to discharge his official duties; or

(9) Commits an assault and battery against a sports official when the sports official is discharging or attempting to discharge official duties at a sports event, or immediately after the sports event at which the sports official discharged official duties. A "sports official" is a person at a sports event who enforces the rules of the event, such as an umpire or referee, or a person who supervises the participants, such as a coach. A "sports event" includes any interscholastic or intramural athletic activity in a primary, middle, junior high, or high school, college, or university, any organized athletic activity sponsored by a community, business, or nonprofit organization, any athletic activity that is a professional or semiprofessional event, and any other organized athletic activity in the State. (1870-1, c. 43, s. 2; 1873-4, c. 176, s. 6; 1879, c. 92, ss. 2, 6; Code, s. 987; Rev., s. 3620, 1911, c. 193; C.S., s. 4215; 1933, c. 189; 1949, c. 298; 1969, c. 618, s. 1; 1971, c. 765, s. 2; 1973, c. 229, s. 4; c. 1413; 1979, cc. 524, 656; 1981, c. 180; 1983, c. 175, ss. 6, 10; c. 720, s. 4; 1985, c. 321; 1991, c. 525, s. 1; 1993, c. 286, s. 1; c. 539, s. 16; 1994, Ex. Sess., c. 14, s. 3; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 687, s. 1.)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1993, c. 539, s. 16, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subsection (a) substituted "Class 1 misdemeanor" for "misdemeanor punishable by a fine not to exceed fifty dollars ($50.00) or imprisonment for not more than 30 days"; and in the introductory language of subsection (b) inserted "Class 1" preceding "misdemeanor" and deleted "punishable by a fine, imprisonment for not more than two years, or both such fine and imprisonment" following "misdemeanor".

The 1994 Extra Session amendment by c. 14, s. 3, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, deleted "or" from the end of subdivisions (b)(1), (b)(2), and (b)(3); substituted "s. 1;" for "s. 1." at the end of the paragraph containing subdivisions (b)(4) through (b)(7); and substituted "duties; or" for "duties." at the end of subdivision (b)(8).

The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 17C or Chapter 116 of the General Statutes" in subdivision (b)(8).

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Quoted in State v. Mixion, 110 N.C. App. 138, 429 S.E.2d 363 (1993).

Stated in Alt v. Parker, 112 N.C. App. 307, 435 S.E.2d 773 (1993).

Cited in In re Kenyon N., 110 N.C. App. 294, 429 S.E.2d 447 (1993); State v. Moore, 111 N.C. App. 649, 432 S.E.2d 887 (1993); State v. Allen, 112 N.C. App. 419, 435 S.E.2d 802 (1993).

§ 14-34. (Effective October 1, 1994 — See editor's note) Assaulting by pointing gun.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-34.1. (Effective October 1, 1994 — See editor's note) Discharging certain barreled weapons or a firearm into occupied property.

Any person who willfully or wantonly discharges or attempts to discharge:

(1) Any barreled weapon capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second; or

(2) A firearm

into any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure while it is occupied is guilty of a Class E felony. (1969, c. 341; c. 869, s. 7; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; c. 755; 1993, c. 539, s. 1141; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — The section above has been set out to correct a printing error.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Stated in State v. Cook, 334 N.C. 564, 433 S.E.2d 730 (1993).

§ 14-34.2. (Effective October 1, 1994 — See editor's note) Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers.

Any person who commits an assault with a firearm or any other deadly weapon upon an officer or employee of the State or of any political subdivision of the State, a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 17C or Chapter 116 of the General Statutes, in the performance of his duties shall be guilty of a Class F felony. (1969, c. 1134; 1977, c. 829; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1981, c. 535, s. 1; 1991, c. 525, s. 2; 1993, c. 539, s. 1142; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 687, s. 2.)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "company police officers, or campus police officers" in the catchline of this section, and inserted "a company police officer certified pursuant to the provisions of Chapter 74E of the General Statutes, or a campus police officer certified pursuant to the provisions of Chapter 17C or Chapter 116 of the General Statutes."

CASE NOTES

Cited in State v. Allen, 112 N.C. App. 419, 435 S.E.2d 802 (1993).

§ 14-34.3. (See editor's note for date change) Manufacture, sale, purchase, or possession of teflon-coated types of bullets prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 9.

Hazing.

§ 14-35. (Effective October 1, 1994 — See editor's note) Hazing; definition and punishment.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-36. (Effective October 1, 1994 — See editor's note) Expulsion from school; duty of faculty to expel.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 10.

Kidnapping and Abduction.

§ 14-39. (See editor's note for date change) Kidnapping.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this

act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. General Consideration.
II. Kidnapping, Generally.
VII. Second-Degree Kidnapping.
  A. In General.

I. GENERAL CONSIDERATION.

Cited in State v. Kyle, 333 N.C. 687, 430 S.E.2d 412 (1993); Messick v. Catawba County, 110 N.C. App. 707, 431 S.E.2d 489 (1993).

II. KIDNAPPING, GENERALLY.

Evidence held sufficient, etc. — Substantial evidence found that the victim-infant was unlawfully confined, restrained and removed within the meaning of this section. State v. Pendergrass, 111 N.C. App. 310, 432 S.E.2d 403 (1993).

VII. SECOND-DEGREE KIDNAPPING.

A. In General.

Sufficient Evidence. — All of the elements for second-degree kidnapping were met. State v. Allen, 112 N.C. App. 419, 435 S.E.2d 802 (1993).

§ 14-40. (Effective October 1, 1994 — See editor's note) Enticing minors out of the State for the purpose of employment.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-41. (Effective October 1, 1994 — See editor's note) Abduction of children.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-42: Repealed by Session Laws 1993, c. 539, s. 1358.2, effective October 1, 1994.

Cross References. — For structured sentencing provisions effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. — Session Laws 1993, c. 539, s. 1358.2 repeals this section effective October 1, 1994. Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-43: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 29(2), effective October 1, 1994.

Cross References. — For structured sentencing provisions effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. — Session Laws 1993, c. 539, s. 1145, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), would have amended this section, effective October 1, 1994.

§ 14-43.1. (Effective October 1, 1994 — See editor's note) Unlawful arrest by officers from other states.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-43.2. (See editor's note for date change) Involuntary servitude.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-43.3. (Effective October 1, 1994 — See editor's note) Felonious restraint.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 11.

Abortion and Kindred Offenses.

§ 14-45.1. When abortion not unlawful.

CASE NOTES

Cited in Kaplan v. Prolife Action League, 111 N.C. App. 1, 431 S.E.2d 828 (1993).

§ 14-46. (Effective October 1, 1994 — See editor's note) Concealing birth of child.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 12.

Libel and Slander.

§ 14-47. (Effective October 1, 1994 — See editor's note) Communicating libelous matter to newspapers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 13.

Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material.

§ 14-49. (Effective October 1, 1994 — See editor's note) Malicious use of explosive or incendiary; punishment.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-49.1. (Effective October 1, 1994 — See editor's note) Malicious damage of occupied property by use of explosive or incendiary; punishment.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-50: Repealed by Session Laws 1994, Extra Session, c. 14, s. 71(4), effective October 1, 1994.

Cross References. — For structured sentencing provisions effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER IV. OFFENSES AGAINST THE HABITATION AND OTHER BUILDINGS.

ARTICLE 14.

Burglary and Other Housebreakings.

§ 14-51. First and second degree burglary.

CASE NOTES

I. General Consideration.
II. Elements of Offense.
  B. First Degree.
IV. Dwelling House or Sleeping Apartment.
XI. Instructions.

I. GENERAL CONSIDERATION.

Cited in State v. Owen, 111 N.C. App. 300, 432 S.E.2d 378 (1993); State v. Worsley, 336 N.C. 268, 443 S.E.2d 68 (1994); State v. Scales, 114 N.C. App. 735, 443 S.E.2d 124 (1994).

II. ELEMENTS OF OFFENSE.

B. First Degree.

Evidence Held Insufficient. — Where a breaking and entering could have occurred any time before the sun rose, the evidence was only sufficient to raise a "suspicion or conjecture" that the breaking and entering occurred at nighttime, and the state failed to produce evidence of one element of first-degree burglary, entitling defendant to have the charge of burglary against him dismissed. However, the jury, in convicting defendant of first-degree burglary, necessarily found facts which established felonious breaking and entering. State v. Barnett, 113 N.C. App. 69, 437 S.E.2d 711 (1993).

IV. DWELLING HOUSE OR SLEEPING APARTMENT.

An uninhabited, unoccupied residential condominium unit, available for rent, is a "dwelling house or sleeping apartment" as those terms are used in the definition of burglary. State v. Hobgood, 112 N.C. App. 262, 434 S.E.2d 881 (1993).

XI. INSTRUCTIONS.

Charge of Misdemeanor Breaking and Entering Not Required. — Where overwhelming evidence showed that prior to breaking into the house defendant had decided to kill his estranged wife's family, all the evidence relevant to the time before defendant broke and entered supported an inference that defendant possessed the intent to kill, and no evidence tended to negate this intent, a rational trier of fact could not have concluded defendant did not possess the intent to commit murder, and the trial court did not err in refusing to instruct on the lesser-included offense of misdeameanor breaking or entering. State v. Gibbs, 335 N.C. 1, 436 S.E.2d 321 (1993).

Instructions as to Lesser Offense Not Supported by Evidence. — Ample evidence from which the jury could infer that defendant entered the victim's house with the intent to commit rape and to commit other offenses against the victims did not conflict with evidence that he intended to commit rape, but was irrelevant for purposes of proof of burglary and of felony murder. Therefore, the State's evidence was positive as to each element of burglary based on the intent to commit rape, and no evidence contradicted any element of this charge. Thus, the trial court did not err in refusing to submit the lesser-included offenses of second-degree murder and involuntary manslaughter to the jury. State v. Yelverton, 334 N.C. 532, 434 S.E.2d 183 (1993).

Failure to instruct on the lesser-included offense of misdemeanor breaking or entering was not error where there was no evidence to support the lesser charge. State v. Gay, 334 N.C. 467, 434 S.E.2d 840 (1993).

§ 14-51.1. Use of deadly physical force against an intruder.

(a) A lawful occupant within a home or other place of residence is justified in using any degree of force that the occupant reasonably believes is necessary, including deadly force, against an intruder to prevent a forcible entry into the home or residence or to terminate the intruder's unlawful entry (i) if the occupant reasonably apprehends that the intruder may kill or inflict serious bodily harm to the occupant or others in the home or residence, or (ii) if the occupant reasonably believes that the intruder intends to commit a felony in the home or residence.

(b) A lawful occupant within a home or other place of residence does not have a duty to retreat from an intruder in the circumstances described in this section.

(c) This section is not intended to repeal, expand, or limit any other defense that may exist under the common law. (1993 (Reg. Sess., 1994), c. 673, s. 1.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 673, s. 2, made this section effective October 1, 1994, and applicable to offenses committed on or after that date.

§ 14-52. (Effective October 1, 1994 — See editor's note) Punishment for burglary.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-54. (See editor's note for date change) Breaking or entering buildings generally.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. General Consideration.
IX. Trial.
  C. Instructions.

I. GENERAL CONSIDERATION.

Cited in State v. Reid, 334 N.C. 551, 434 S.E.2d 193 (1993); State v. Williams, 334 N.C. 440, 434 S.E.2d 588 (1993).

IX. TRIAL.

C. Instructions.

Charge on Lesser Offense Not Required Absent Evidence Thereof. — Where overwhelming evidence showed that prior to breaking into the house defendant had decided to kill his estranged wife's family, all the evidence relevant to the time before defendant broke and entered supported an inference that defendant possessed the intent to kill, and no evidence tended to negate this intent, a rational trier of fact could not have concluded defendant did not possess the intent to commit murder, and the trial court did not err in refusing to instruct on the lesser included offense of misdeameanor breaking or entering. State v. Gibbs, 335 N.C. 1, 436 S.E.2d 321 (1993).

§ 14-55. (Effective October 1, 1994 — See editor's note) Preparation to commit burglary or other housebreakings.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-56.1. (Effective October 1, 1994 — See editor's note) Breaking into or forcibly opening coin- or currency-operated machines.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in State v. Sullivan, 111 N.C. App. 441, 432 S.E.2d 376 (1993).

§ 14-56.2. (Effective October 1, 1994 — See editor's note) Damaging or destroying coin- or currency-operated machines.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-56.3. (Effective October 1, 1994 — See editor's note) Breaking into paper currency machines.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-57. (Effective October 1, 1994 — See editor's note) Burglary with explosives.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 15.

Arson and Other Burnings.

§ 14-58. (Effective October 1, 1994 — See editor's note) Punishment for arson.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Second-Degree Arson — Elements. — Combining the definitions found in the common law definition of arson and those found in this section, the court found the elements of second-degree arson to be: (1) the malicious and willful (2) burning of a structure; (3) which is the dwelling house of another; and (4) which is unoccupied at the time of the burning. State v. Jones, 110 N.C. App. 289, 429 S.E.2d 410 (1993).

Sufficiency of Indictment. — Even though the statutory reference was incorrect, the body of the indictment was sufficient to properly charge defendant with the burning of a mobile home. State v. Jones, 110 N.C. App. 289, 429 S.E.2d 410 (1993).

Validity of Trial Upheld. — Although indictments charging attempted first-degree arson recited that the charges were brought pursuant to this section, they actually charged a violation of § 14-67 which prohibits attempted arson; this mistake in the citation of the statute did not affect the validity of the trial. State v. Barnes, 333 N.C. 666, 430 S.E.2d 223 (1993).

§ 14-58.2. Burning of mobile home, manufactured-type house or recreational trailer home.

CASE NOTES

Cited in State v. Jones, 110 N.C. App. 289, 429 S.E.2d 410 (1993).

§ 14-59. (Effective October 1, 1994 — See editor's note) Burning of certain public buildings.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Construction with Other Statutes. — The burning of personal property in violation of § 14-66 was not a lesser included offense of burning a public building in violation of this section. In re Davis, 114 N.C. App. 253, 441 S.E.2d 696 (1994).

§ 14-60. (Effective October 1, 1994 — See editor's note) Burning of schoolhouses or buildings of educational institutions.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-61. (Effective October 1, 1994 — See editor's note) Burning of certain bridges and buildings.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-62. (Effective October 1, 1994 — See editor's note) Burning of churches and certain other buildings.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-62.1. (Effective October 1, 1994 — See editor's note) Burning of building or structure in process of construction.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this

act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-66. Burning of personal property.

CASE NOTES

Construction with Other Statutes. — The burning of personal property in violation of this section was not a lesser included offense of burning a public building in violation of § 14-59. In re Davis, 114 N.C. App. 253, 441 S.E.2d 696 (1994).

§ 14-67: Repealed by Session Laws 1993, c. 539, s. 1358.2, effective October 1, 1994.

Cross References. — For structured sentencing provisions effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. — Session Laws 1993, c. 539, s. 1358.2 repeals this section effective October 1, 1994. Section 1359 of Session Laws 1993, c. 539, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-67.1. (Effective October 1, 1994 — See editor's note) Burning other buildings.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Validity of Trial Not Affected by Improper Statutory Reference. — Although indictments charging attempted first-degree arson recited that the charges were brought pursuant to § 14-58, they actually charged a violation of this section which prohibits attempted arson; this mistake in the citation of the statute did not affect the validity of the trial. State v. Barnes, 333 N.C. 666, 430 S.E.2d 223 (1993).

§ 14-68. (Effective October 1, 1994 — See editor's note) Failure of owner of property to comply with orders of public authorities.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective

date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-69. (Effective October 1, 1994 — See editor's note) Failure of officers to investigate incendiary fires.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-69.1. (Effective October 1, 1994 — See editor's note) Making a false report concerning destructive device.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-69.2. (Effective October 1, 1994 — See editor's note) Perpetrating hoax by use of false bomb or other device.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER V. OFFENSES AGAINST PROPERTY.

ARTICLE 16.

Larceny.

§ 14-70. (Effective October 1, 1994 — See editor's note) Distinctions between grand and petit larceny abolished; punishment; accessories to larceny.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 24, s. 45 provides for the Department of Correction, the Department of Crime Control and Public Safety, and the Department of Justice to study the effect on the criminal justice system of having the sentence of life imprisonment without parole for certain criminal offenses and to consider whether the sentence has served as a deterrent with regard to those crimes for which it may be imposed, other impacts the sentence may have had on the crime rate, its fiscal impact on the State's finances, and projected costs if the sentence continues to be imposed. The findings and recommendations are to be reported by January 1, 2005.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

CASE NOTES

I. General Consideration.
III. Practice and Procedure.

I. GENERAL CONSIDERATION.

Applied in State v. Withers, 111 N.C. App. 340, 432 S.E.2d 692 (1993).

III. PRACTICE AND PROCEDURE.

Conviction for Larceny, Receiving and Possession of Same Property. — Where defendant was convicted of larceny, receiving, and possession of the same property, he may be convicted of only one of those offenses, and the trial court erred in failing to arrest judgment for defendant's conviction of felonious possession of stolen goods. State v. Barnett, 113 N.C. App. 69, 437 S.E.2d 711 (1993).

§ 14-71. (Effective October 1, 1994 — See editor's note) Receiving stolen goods.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-71.1. (Effective October 1, 1994 — See editor's note) Possessing stolen goods.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-72. (See editor's note for date change) Larceny of property; receiving stolen goods or possessing stolen goods.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Cited in State v. Sullivan, 111 N.C. App. 441, 432 S.E.2d 376 (1993); State v. Withers, 111 N.C. App. 340, 432 S.E.2d 692 (1993).

§ 14-72.1. Concealment of merchandise in mercantile establishments.

(a) Whoever, without authority, willfully conceals the goods or merchandise of any store, not theretofore purchased by such person, while still upon the premises of such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e). Such goods or merchandise found concealed upon or about the person and which have not theretofore been purchased by such person shall be prima facie evidence of a willful concealment.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 841, s. 2, effective October 1, 1986.

(c) **(See editor's note)** A merchant, or the merchant's agent or employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, where such detention is in a reasonable manner for a reasonable length of time, if in detaining or in causing the arrest of such person, the merchant, or the merchant's agent or employee, or the peace officer had at the time of the detention or arrest probable cause to believe that the person committed the offense created by this section. If the person being detained by the merchant, or the merchant's agent or employee, is a minor under the age of 18 years, the merchant or the merchant's agent or employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, or the merchant's agent or employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor.

(d) Whoever, without authority, willfully transfers any price tag from goods or merchandise to other goods or merchandise having a higher selling price or marks said goods at a lower price or substitutes or superimposes thereon a false price tag and then presents said goods or merchandise for purchase shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e).

Nothing herein shall be construed to provide that the mere possession of goods or the production by shoppers of improperly priced merchandise for checkout shall constitute prima facie evidence of guilt.

(e) **(Effective October 1, 1994 — See editor's note)** Punishment. — For a first conviction under subsections (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant may be guilty of a Class 3 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant may be guilty of a Class 2 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant be imprisoned for a term of at least 72 hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant may be guilty of a Class 1 misdemeanor. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 14 days. However, if the sentencing judge finds that the defendant is unable, by reason of mental or physical infirmity, to perform the service required under this section, and the reasons for such findings are set forth in the judgment, he may pronounce such other sentence as he finds appropriate.

(f) Community Service Period. — If the judgment requires a defendant sentenced under this section to perform a specified number of hours of community service, the community service must be completed within:

(1) 90 days, if the amount of community service required is 72 hours or more;
(2) 60 days, if the amount of community service required is at least 48 hours but less than 72 hours; and
(3) 30 days, if the amount of community service required is at least 24 hours but less than 48 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection. Failure to complete the community service requirement within the applicable time limits is a violation of the defendant's probation.

(g) Limitations. — For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial;

(2) The defendant must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period; and

(3) The defendant may not be released or paroled unless he is otherwise eligible and has served the mandatory minimum period of imprisonment. (1957, c. 301; 1971, c. 238; 1973, c. 457, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 841, ss. 1-3; 1987, c. 660; 1993, c. 539, s. 35; 1994, Ex. Sess., c. 24, s. 14(c); c. 28, s. 1.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment by c. 28, s. 1, effective January 1, 1995, and applicable to offenses occurring on or after that date, in subsection (c) substituted "the merchant's" for "his" throughout the subsection, substituted "minor under the age of 18 years" for "minor 16 years of age or younger," and added the last sentence of the subsection.

§ 14-72.2. (See editor's note for date change) Unauthorized use of a motor-propelled conveyance.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-72.3. Removal of shopping cart from shopping premises.

(a) As used in this section:

(1) "Shopping cart" means the type of push cart commonly provided by grocery stores, drugstores, and other retail stores for customers to transport commodities within the store and from the store to their motor vehicles outside the store.

(2) "Premises" includes the motor vehicle parking area set aside for customers of the store.

(b) It is unlawful for any person to remove a shopping cart from the premises of a store without the consent, given at the time of the removal, of the store owner, manager, agent or employee.

(c) Violation of this section is a Class 3 misdemeanor. (1983, c. 705, s. 1; 1994, Ex. Sess., c. 14, s. 3.1.)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 3 misdemeanor" for "misdemeanor punishable by a fine of not more than one hundred dollars ($100.00), imprisonment for not more than thirty days, or both" in subsection (c).

§ 14-72.4. Unauthorized taking or sale of labeled dairy milk cases or milk crates bearing the name or label of owner.

(a) A person is guilty of the unauthorized taking or sale of a dairy milk case or milk crate on or after January 1, 1990, if he:

(1) Takes, buys, sells or disposes of any dairy milk case or milk crate, bearing the name or label of the owner, without the express or implied consent of the owner or his designated agent; or

(2) Refuses upon demand of the owner or his designated agent to return to the owner or his designated agent any dairy milk case or milk crate, bearing the name or label of the owner; or

(3) Defaces, obliterates, erases, covers up, or otherwise removes or conceals any name, label, registered trademark, insignia, or other business identification of an owner of a dairy milk case or milk crate, for the purpose of destroying or removing from the milk case or milk crate evidence of its ownership.

(b) For purposes of this section dairy milk cases or milk crates shall be deemed to bear a name or label of an owner when there is imprinted or attached on the case or crate a name, insignia, mark, business identification or label showing ownership or sufficient information to ascertain ownership. For purposes of this section, the term "dairy case" shall be defined as a wire or plastic container which holds 16 quarts or more of beverage and is used by distributors or retailers, or their agents, as a means to transport, store, or carry dairy products.

(c) A violation of this section is a Class 2 misdemeanor.

(d) Nothing in this section shall preclude the prosecution of any misdemeanor or felony offense that is applicable under any other statute or common law. (1989, c. 303, s. 1; 1994, Ex. Sess., c. 14, s. 3.2.)

Editor's Note. —
Session Laws 1994, Extra Session, c.14, s.73, provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor punishable by a fine not to exceed three hundred dollars ($300.00), imprisonment not to exceed six months, or both, in the discretion of the court" in subsection (c).

§ 14-75. (Effective October 1, 1994 — See editor's note) Larceny of chose in action.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-76. (Effective October 1, 1994 — See editor's note) Larceny, mutilation, or destruction of public records and papers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-76.1. (Effective October 1, 1994 — See editor's note) Mutilation or defacement of records and papers in the North Carolina State Archives.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-77. (Effective October 1, 1994 — See editor's note) Larceny, concealment or destruction of wills.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-78. (Effective October 1, 1994 — See editor's note) Larceny of ungathered crops.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-78.1: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(1), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-79. (Effective October 1, 1994 — See editor's note) Larceny of ginseng.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-80: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(2), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-81. (See editor's note for date change) Larceny of horses, mules, swine, cattle, or dogs.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-82. Taking horses, mules, or dogs for temporary purposes.

If any person shall unlawfully take and carry away any horse, gelding, mare, mule, or dog, the property of another person, secretly and against the will of the owner of such property, with intent to deprive the owner of the special or temporary use of the same, or with the intent to use such property for a special or temporary purpose, the person so offending shall be guilty of a Class 2 misdemeanor. (1879, c. 234, s. 1; Code, s. 1067; Rev., s. 3509; 1913, c. 11; C.S., s. 4261; 1969, c. 1224, s. 3; 1989, c. 773, s. 3; 1994, Ex. Sess., c. 14, s. 3.3.)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date substituted "Class 2 misdemeanor" for "misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for not more than six months, or both."

§ 14-85. (Effective October 1, 1994 — See editor's note) Pursuing or injuring livestock with intent to steal.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-86: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(3), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 17.

Robbery.

§ 14-87. (See editor's note for date change) Robbery with firearms or other dangerous weapons.

Editor's Note. — Session Laws 1993, c. 539, s. 1173 repeals subsection (d) of this section effective October 1, 1994. Section 1359 of Session Laws 1993, c. 539, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. General Consideration.
IX. Evidence.

I. GENERAL CONSIDERATION.

Cited in United States v. Fonville, 5 F.3d 781 (4th Cir. 1993); State v. Capps, 114 N.C. App. 156, 441 S.E.2d 621 (1994).

IX. EVIDENCE.

Evidence held sufficient to be submitted to the jury, etc. —

Evidence held sufficient to sustain conviction, etc.,

Substantial evidence existed in the record to support the trial court's submission of the case against defendant for robbery with a dangerous weapon to the jury even though no physical evidence was found. State v. Roddey, 110 N.C. App. 810, 431 S.E.2d 245 (1993).

Where there was evidence that defendant was in possession of money apparently belonging to the victim at the time witness and other defendant entered the victim's home and where there was also evidence that defendant was in possession of a gun at that time, there was sufficient evidence to support defendant's conviction for robbery with a dangerous weapon. State v. Wiggins, 334 N.C. 18, 431 S.E.2d 755 (1993).

Evidence was clearly sufficient to show that defendant robbed victim with the use of a dangerous weapon. State v. Everette, 111 N.C. App. 775, 433 S.E.2d 802 (1993).

§ 14-87.1. (Effective October 1, 1994 — See editor's note) Punishment for common-law robbery.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in United States v. Fonville, 5 F.3d 781 (4th Cir. 1993).

§ 14-88. (Effective October 1, 1994 — See editor's note) Train robbery.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-89: Repealed by Session Laws 1994, Extra Session, c. 14, s. 71(5), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-89.1. (See editor's note for date change) Safecracking.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 18.

Embezzlement.

§ 14-92. (Effective October 1, 1994 — See editor's note) Embezzlement of funds by public officers and trustees.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-93. (Effective October 1, 1994 — See editor's note) Embezzlement by treasurers of charitable and religious organizations.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-95: Repealed by Session Laws 1994, Extra Session, c. 14, s. 71(6), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-97. (Effective October 1, 1994 — See editor's note) Appropriation of partnership funds by partner to personal use.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-99. (Effective October 1, 1994 — See editor's note) Embezzlement of taxes by officers.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 19.

False Pretenses and Cheats.

§ 14-100. Obtaining property by false pretenses.

CASE NOTES

I. General Consideration.
IV. Illustrative Cases.

I. GENERAL CONSIDERATION.

Applied in State v. Almond, 112 N.C. App. 137, 435 S.E.2d 91 (1993).

IV. ILLUSTRATIVE CASES.

Jury Instruction Failed to Allege Exact Misrepresentation Upheld. — Where the State's evidence showed that defendant obtained property (the victims' money) by false pretenses (the statements that defendant was a "broker" or "licensed broker" and that their money would be invested in stock options), even though the instruction on obtaining property by false pretenses failed to mention the exact misrepresentation alleged in the indictment, there was no fatal variance between the indictment, the proof presented at trial, and the instructions given to the jury. State v. Clemmons, 111 N.C. App. 569, 433 S.E.2d 748 (1993).

§ 14-101. (Effective October 1, 1994 — See editor's note) Obtaining signatures by false pretenses.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-102. (Effective October 1, 1994 — See editor's note) Obtaining property by false representation of pedigree of animals.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-103. (Effective October 1, 1994 — See editor's note) Obtaining certificate of registration of animals by false representation.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-104. (Effective October 1, 1994 — See editor's note) Obtaining advances under promise to work and pay for same.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-105. (Effective October 1, 1994 — See editor's note) Obtaining advances under written promise to pay therefor out of designated property.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-106. (Effective October 1, 1994 — See editor's note) Obtaining property in return for worthless check, draft or order.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-107. (Effective October 1, 1994 — See editor's note) Worthless checks.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-108. (Effective October 1, 1994 — See editor's note) Obtaining property or services from slot machines, etc., by false coins or tokens.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-109. (Effective October 1, 1994 — See editor's note) Manufacture, sale, or gift of devices for cheating slot machines, etc.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-110. (Effective October 1, 1994 — See editor's note) Defrauding innkeeper or campground owner.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-111: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(4), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-111.1. (Effective October 1, 1994 — See editor's note) Obtaining ambulance services without intending to pay therefor — Buncombe, Haywood and Madison Counties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-111.2. (Effective October 1, 1994 — See editor's note) Obtaining ambulance services without intending to pay therefor — certain named counties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-111.3. (Effective October 1, 1994 — See editor's note) Making unneeded ambulance request in certain counties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-112. (Effective October 1, 1994 — See editor's note) Obtaining merchandise on approval.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-113. (Effective October 1, 1994 — See editor's note) Obtaining money by false representation of physical defect.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 19A.

Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means.

§ 14-113.6. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 19B.

Financial Transaction Card Crime Act.

§ 14-113.17. (See editor's note for date change) Punishment and penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this

act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 20.

Frauds.

§ 14-114. (See editor's note for date change) Fraudulent disposal of personal property on which there is a security interest.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-115. (Effective October 1, 1994 — See editor's note) Secreting property to hinder enforcement of lien or security interest.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-116: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 30(1), effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 34, which repeals this section effective October 1, 1994, provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-117. (Effective October 1, 1994 — See editor's note) Fraudulent and deceptive advertising.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-117.1: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(5), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-117.2. (See editor's note for date change) Gasoline price advertisements.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-118. (Effective October 1, 1994 — See editor's note) Blackmailing.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-118.1. (Effective October 1, 1994 — See editor's note) Simulation of court process in connection with collection of claim, demand or account.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-118.2. (See editor's note for date change) Assisting, etc., in obtaining academic credit by fraudulent means.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-118.3. (Effective October 1, 1994 — See editor's note) Acquisition and use of information obtained from patients in hospitals for fraudulent purposes.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-118.4. (Effective October 1, 1994 — See editor's note) Extortion.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-118.5. (Effective October 1, 1994 — See editor's note) Theft of cable television service.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 21.

Forgery.

§ 14-120. (Effective October 1, 1994 — See editor's note) Uttering forged paper or instrument containing a forged endorsement.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-121. (Effective October 1, 1994 — See editor's note) Selling of certain forged securities.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-122. (Effective October 1, 1994 — See editor's note) Forgery of deeds, wills and certain other instruments.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-122.1. (See editor's note for date change) Falsifying documents issued by a secondary school, postsecondary educational institution, or governmental agency.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER VI. CRIMINAL TRESPASS.

ARTICLE 22.

Damages and Other Offenses to Land and Fixtures.

§ 14-127. (Effective October 1, 1994 — See editor's note) Willful and wanton injury to real property.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in State v. Sullivan, 110 N.C. App. 779, 431 S.E.2d 502 (1993).

§ 14-128. (Effective October 1, 1994 — See editor's note) Injury to trees, crops, lands, etc., of another.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-129. (Effective October 1, 1994 — See editor's note) Taking, etc., of certain wild plants from land of another.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-130. (Effective October 1, 1994 — See editor's note) Trespass on public lands.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-131. (Effective October 1, 1994 — See editor's note) Trespass on land under option by the federal government.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-132. (See editor's note for date change) Disorderly conduct in and injuries to public buildings and facilities.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-132.2. (Effective October 1, 1994 — See editor's note) Willfully trespassing upon or damaging a public school bus.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-133: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 30(2), effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 34, which repeals this section effective October 1, 1994, provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-134.2. (Effective October 1, 1994 — See editor's note) Operating motor vehicle upon utility easements after being forbidden to do so.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-134.3. (Effective October 1, 1994 — See editor's note) Domestic criminal trespass.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-135. (Effective October 1, 1994 — See editor's note) Cutting, injuring, or removing another's timber.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-136. (Effective October 1, 1994 — See editor's note) Setting fire to grass and brushlands and woodlands.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-137. (Effective October 1, 1994 — See editor's note) Willfully or negligently setting fire to woods and fields.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-138: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(6), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-140: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 30(3), effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 34, which repeals this section effective October 1, 1994, provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-141. (Effective October 1, 1994 — See editor's note) Burning or otherwise destroying crops in the field.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-142. (Effective October 1, 1994 — See editor's note) Injuries to dams and water channels of mills and factories.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-144. (Effective October 1, 1994 — See editor's note) Injuring houses, churches, fences and walls.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-145. (Effective October 1, 1994 — See editor's note) Unlawful posting of advertisements.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-146. (Effective October 1, 1994 — See editor's note) Injuring bridges.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-147. (Effective October 1, 1994 — See editor's note) Removing, altering or defacing landmarks.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-148. (See editor's note for date change) Defacing or desecrating grave sites.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Interment of Body Required. — The presence of a deceased body is an essential element of the crime of defacing or desecrating a grave under subdivision (a)(2) of this section, and to prove a violation of this section, the state must prove not only that the defendant willfully performed an act proscribed by the section, but that a deceased person was interred in the cemetery at the time the proscribed act was committed. State v. Phipps, 112 N.C. App. 626, 436 S.E.2d 280 (1993), cert. allowed, 335 N.C. 563, 441 S.E.2d 131 (1994).

§ 14-151. (Effective October 1, 1994 — See editor's note) Interfering with gas, electric and steam appliances.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-151.1. (See editor's note for date change) Interfering with electric, gas or water meters; prima facie evidence of intent to alter, tamper with or bypass electric, gas or water meters; unlawful reconnection of electricity, gas, or water; civil liability.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-152. (Effective October 1, 1994 — See editor's note) Injuring fixtures and other property of gas companies; civil liability.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-153. (Effective October 1, 1994 — See editor's note) Tampering with engines and boilers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-154. (Effective October 1, 1994 — See editor's note) Injuring wires and other fixtures of telephone, telegraph and electric-power companies.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-155. (Effective October 1, 1994 — See editor's note) Unauthorized connections with telephone or telegraph.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-156. (Effective October 1, 1994 — See editor's note) Injuring fixtures and other property of electric-power companies.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-157. (Effective October 1, 1994 — See editor's note) Felling trees on telephone and electric-power wires.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-158. (Effective October 1, 1994 — See editor's note) Interfering with telephone lines.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-159. (Effective October 1, 1994 — See editor's note) Injuring buildings or fences; taking possession of house without consent.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-159.1. (See editor's note for date change) Contaminating a public water system.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-159.2. (See editor's note for date change) Interference with animal research.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 22A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§ 14-159.6. (Effective October 1, 1994 — See editor's note) Trespass for purposes of hunting, etc., without written consent a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-159.8. (Effective October 1, 1994 — See editor's note) Mutilation, etc., of "posted" signs; posting signs without consent of owner or agent.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 22B.

First and Second Degree Trespass.

§ 14-159.12. (See editor's note for date change) First degree trespass.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-159.13. (See editor's note for date change) Second degree trespass.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in State v. Sullivan, 110 N.C. App. 779, 431 S.E.2d 502 (1993).

ARTICLE 22C.

Cave Protection Act.

§ 14-159.21. (Effective October 1, 1994 — See editor's note) Vandalism; penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-159.22. (Effective October 1, 1994 — See editor's note) Sale of speleothems unlawful; penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 23.

Trespasses to Personal Property.

§ 14-160. (Effective October 1, 1994 — See editor's note) Willful and wanton injury to personal property; punishments.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-160.1. (See editor's note for date change) Alteration, destruction or removal of permanent identification marks from personal property.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-161: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(7), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-162. (Effective October 1, 1994 — See editor's note) Removing boats.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-163.1. (Effective October 1, 1994 — See editor's note) Injuring or killing law-enforcement agency animal.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective

date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-164: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(8), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 24.

Vehicles and Draft Animals—Protection of Bailor against Acts of Bailee.

§ 14-165. (Effective October 1, 1994 — See editor's note) Malicious or willful injury to hired personal property.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-166. (Effective October 1, 1994 — See editor's note) Subletting of hired property.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-167. (Effective October 1, 1994 — See editor's note) Failure to return hired property.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-168. (Effective October 1, 1994 — See editor's note) Hiring with intent to defraud.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-168.1. (Effective October 1, 1994 — See editor's note) Conversion by bailee, lessee, tenant or attorney-in-fact.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-168.4. (See editor's note for date change) Failing to return rented property on which there is purchase option.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-169. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 25.

Regulating the Leasing of Storage Batteries.

§§ 14-170 through 14-176: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 30(4)-(10), effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 34, which repeals these sections effective October 1, 1994, provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

SUBCHAPTER VII. OFFENSES AGAINST PUBLIC MORALITY AND DECENCY.

ARTICLE 26.

Offenses against Public Morality and Decency.

§ 14-177. (Effective October 1, 1994 — See editor's note) Crime against nature.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

This section is constitutional. — The right of privacy does not prohibit the prosecution of unmarried persons for consensual fellatio done in private. State v. Poe, 40 N.C. App. 385, 252 S.E.2d 843, cert. denied and appeal dismissed, 298 N.C. 303, 259 S.E.2d 304 (1979), appeal dismissed, 445 U.S. 947, 100 S. Ct. 1593, 63 L. Ed. 2d 782 (1980).

Sexual Preference. — Neither by its terms nor by judicial gloss proscribes sexual preference or the status of being homosexual; in order to violate the statute, a person must commit one of the specific acts coming within the purview of the statute. Donovan v. Fiumara, 114 N.C. App. 524, 442 S.E.2d 572 (1994).

A simple statement descriptive of an individual's alleged sexual orientation does not as a matter of law impute to that individual commission of a crime. Donovan v. Fiumara, 114 N.C. App. 524, 442 S.E.2d 572 (1994).

Referring to a person as "gay" or "bisexual" is not tantamount to charging that individual with the commission of a crime. Donovan v. Fiumara, 114 N.C. App. 524, 442 S.E.2d 572 (1994).

§ 14-178. (Effective October 1, 1994 — See editor's note) Incest between certain near relatives.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Evidence. — The crime of felonious incest has as an element that the defendant and the other participant be related in one of three enumerated familial ways, including parent-child. Thus, to prove one element of the offense in the case at hand, it was necessary to establish the parent-child relationship and it was error to then use the evidence of this relationship to find that defendant took advantage of a position of trust or confidence. State v. Hughes, 114 N.C. App. 742, 443 S.E.2d 76 (1994).

§ 14-179. (Effective October 1, 1994 — See editor's note) Incest between uncle and niece and nephew and aunt.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-183. (Effective October 1, 1994 — See editor's note) Bigamy.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-184. (Effective October 1, 1994 — See editor's note) Fornication and adultery.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-186. (Effective October 1, 1994 — See editor's note) Opposite sexes occupying same bedroom at hotel for immoral purposes; falsely registering as husband and wife.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-188. (See editor's note for date change) Certain evidence relative to keeping disorderly houses admissible; keepers of such houses defined; punishment.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.1. (See editor's note for date change) Obscene literature and exhibitions.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.4. (Effective October 1, 1994 — See editor's note) Coercing acceptance of obscene articles or publications.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.5. (Effective October 1, 1994 — See editor's note) Preparation of obscene photographs, slides and motion pictures.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.8. (Effective October 1, 1994 — See editor's note) Dissemination to minors under the age of 13 years.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.9. (Effective October 1, 1994 — See editor's note) Indecent exposure.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.14. (See editor's note for date change) Displaying material harmful to minors.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.15. (See editor's note for date change) Disseminating harmful material to minors; exhibiting harmful performances to minors.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.16. (See editor's note for date change) First degree sexual exploitation of a minor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.17. (See editor's note for date change) Second degree sexual exploitation of a minor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.17A. (See editor's note for date change) Third degree sexual exploitation of a minor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.18. (See editor's note for date change) Promoting prostitution of a minor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-190.19. (See editor's note for date change) Participating in prostitution of a minor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-195: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 30(11), effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 34, which repeals this section effective October 1, 1994, provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-196. (See editor's note for date change) Using profane, indecent or threatening language to any person over telephone; annoying or harassing by repeated telephoning or making false statements over telephone.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-197. (Effective October 1, 1994 — See editor's note) Using profane or indecent language on public highways; counties exempt.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-199. (Effective October 1, 1994 — See editor's note) Obstructing way to places of public worship.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§§ 14-200, 14-201: Repealed by Session Laws 1994, Extra Session, c. 14, ss. 72(9), 72(10), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals these sections effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-202. (Effective October 1, 1994 — See editor's note) Secretly peeping into room occupied by female person.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-202.1. (See editor's note for date change) Taking indecent liberties with children.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. General Consideration.
II. Elements and Proof of Offense.
III. Evidence.

I. GENERAL CONSIDERATION.

Cited in Messick v. Catawba County, 110 N.C. App. 707, 431 S.E.2d 489 (1993).

II. ELEMENTS AND PROOF OF OFFENSE.

Evidence Held Sufficient. — Evidence of defendant's age held sufficient to sustain conviction for the offense of taking indecent liberties with a child. State v. Bynum, 111 N.C. App. 845, 433 S.E.2d 778, cert. denied, 335 N.C. 239, 439 S.E.2d 153 (1993).

Testimony of child victim held sufficient, etc.

The uncorroborated testimony of the victim is sufficient to convict under this section if the testimony establishes all of the elements of the offense. State v. Quarg, 334 N.C. 92, 431 S.E.2d 1 (1993).

III. EVIDENCE.

Expert Testimony Improperly Admitted as Substantive Evidence. — In defendant's trial for first-degree rape and taking indecent liberties with a child, the trial court admitted expert's testimony as substantive evidence. To do so was error because expert testimony regarding the symptoms and characteristics of sexually abused children is admissible only to assist the jury in understanding the behavior patterns of sexually abused children, and must be so limited by the trial court. State v. Hutchens, 110 N.C. App. 455, 429 S.E.2d 755, cert. denied, 334 N.C. 436, 433 S.E.2d 181 (1993).

ARTICLE 26A.

Adult Establishments.

§ 14-202.12. (Effective October 1, 1994 — See editor's note) Violations; penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 27.

Prostitution.

§ 14-203. Definition of terms.

CASE NOTES

Cited in Jackson v. Kimel, 992 F.2d 1318 (4th Cir. 1993); Phillips v. J.P. Stevens & Co., 827 F. Supp. 349 (M.D.N.C. 1993).

§ 14-204.1. (See editor's note for date change) Loitering for the purpose of engaging in prostitution offense.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-208. (Effective October 1, 1994 — See editor's note) Punishment; probation; parole.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER VIII. OFFENSES AGAINST PUBLIC JUSTICE.

ARTICLE 28.

Perjury.

§ 14-209. (Effective October 1, 1994 — See editor's note) Punishment for Perjury.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-210. (Effective October 1, 1994 — See editor's note) Subornation of perjury.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-211. (Effective October 1, 1994 — See editor's note) Perjury before legislative committees.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-212: Repealed by Session Laws 1994, Extra Session, c. 14, s. 71(7), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 29.

Bribery.

§ 14-217. (See editor's note for date change) Bribery of officials.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in State v. Hair, 114 N.C. App. 464, 442 S.E.2d 163 (1994).

§ 14-218. (Effective October 1, 1994 — See editor's note) Offering bribes.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Evidence Held Sufficient. — The offer of money to an Alcohol Beverage Control (ABC) enforcement officer with the request that the officer arrest or stop a person for driving while impaired is a bribe within the meaning of this section. State v. Hair, 114 N.C. App. 464, 442 S.E.2d 163 (1994).

A corrupt intent means a wrongful design to acquire some pecuniary profit or other advantage. State v. Hair, 114 N.C. App. 464, 442 S.E.2d 163 (1994).

§ 14-220. (Effective October 1, 1994 — See editor's note) Bribery of jurors.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 30.

Obstructing Justice.

§ 14-221. (Effective October 1, 1994 — See editor's note) Breaking or entering jails with intent to injure prisoners.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Specific Intent Is Element of Offense. — All of the codified obstruction of justice offenses found at § 14-221 through § 14-227 are specific intent crimes, requiring that the state present evidence that the defendant acted willfully or with purpose in committing the offense. State v. Eastman, 113 N.C. App. 347, 438 S.E.2d 460 (1994).

§ 14-222: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 30(12), effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 34, which repeals this section effective October 1, 1994, provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-223. (Effective October 1, 1994 — See editor's note) Resisting officers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would

be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

I. General Consideration.

I. GENERAL CONSIDERATION.

Cited in Fowler v. Valencourt, 334 N.C. 345, 432 S.E.2d 306 (1993).

§ 14-225. (Effective October 1, 1994 — See editor's note) False reports to law enforcement agencies or officers.

Any person who shall willfully make or cause to be made to a law enforcement agency or officer any false, misleading or unfounded report, for the purpose of interfering with the operation of a law enforcement agency, or to hinder or obstruct any law enforcement officer in the performance of his duty, shall be guilty of a Class 2 misdemeanor. (1941, c. 363; 1969, c. 1224, s. 3; 1993, c. 539, s. 137; 1994, Ex. Sess., c. 23, ss. 1-3; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 23, s. 3, effective October 1, 1994, repeals Section 137 of Chapter 539 of the 1993 Session Laws, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), which would have amended this section effective October 1, 1994, by substituting "Class 2 misdemeanor" for former penalty provisions.

Session Laws 1994, Extra Session, c. 23, s. 4, which amended this section, provides: "Prosecutions for offenses committed before the effective dates of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment by c. 23, s. 1, effective July 1, 1994, and applicable to offenses occurring on or after that date, substituted "False reports to law enforcement agencies or officers" for "False, etc., reports to police radio broadcasting stations" in the catchline of this section; substituted "law enforcement agency or officer" for "police radio broadcasting station," substituted "of a law enforcement agency" for "thereof," and substituted "law enforcement officer" for "peace officer."

The 1994 Extra Session amendment by c. 23, s. 2, effective on the same day that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for not more than six months, or both."

§ 14-225.1. (Effective October 1, 1994 — See editor's note) Picketing or parading.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-225.2. (See editor's note for date change) Harassment of and communication with jurors.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-226. (Effective October 1, 1994 — See editor's note) Intimidating or interfering with witnesses.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-226.1. (Effective October 1, 1994 — See editor's note) Violating orders of court.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-227. (Effective October 1, 1994 — See editor's note) Failing to attend as witness before legislative committees.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would

be applicable but for this act remain applicable to those prosecutions."

ARTICLE 30A.

Secret Listening.

§ 14-227.3. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 31.

Misconduct in Public Office.

§ 14-228. (Effective October 1, 1994 — See editor's note) Buying and selling offices.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-230. (Effective October 1, 1994 — See editor's note) Willfully failing to discharge duties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Failure to Establish Defendant Was an Official. — Where the State failed to show any instance where the defendant could exercise sovereign power at any time in the course of his employment and failed to show that the defendant's position of senior administrator at school for the blind was created by statute, constitution, or delegation of state authority, the state failed to establish he was an official of a state institution. State v. Eastman, 113 N.C. App. 347, 438 S.E.2d 460 (1994).

§ 14-231. (Effective October 1, 1994 — See editor's note) Failing to make reports and discharge other duties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-232. (Effective October 1, 1994 — See editor's note) Swearing falsely to official reports.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-233. (Effective October 1, 1994 — See editor's note) Making of false report by bank examiners; accepting bribes.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-234. (See editor's note for date change) Director of public trust contracting for his own benefit; participation in business transaction involving public funds; exemptions.

Local Modification. — Bladen: 1993 (Reg. Sess., 1994), c. 721, s. 3.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-234.1. (See editor's note for date change) Misuse of confidential information.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-235: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(11), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, c. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-236. (Effective October 1, 1994 — See editor's note) Acting as agent for those furnishing supplies for schools and other State institutions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-237. (Effective October 1, 1994 — See editor's note) Buying school supplies from interested officer.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-238. (Effective October 1, 1994 — See editor's note) Soliciting during school hours without permission of school head.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective

date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-239. (Effective October 1, 1994 — See editor's note) Allowing prisoners to escape; punishment.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-241. (Effective October 1, 1994 — See editor's note) Disposing of public documents or refusing to deliver them over to successor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-242. (Effective October 1, 1994 — See editor's note) Failing to return process or making false return.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-243. (Effective October 1, 1994 — See editor's note) Failing to surrender tax list for inspection and correction.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-244. (Effective October 1, 1994 — See editor's note) Failing to file report of fines or penalties.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-246. (Effective October 1, 1994 — See editor's note) Failure of ex-magistrate to turn over books, papers and money.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-251. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Article 32.

Misconduct in Private Office.

§ 14-253. (Effective October 1, 1994 — See editor's note) Failure of certain railroad officers to account with successors.

If the president and directors of any railroad company, and any person acting under them, shall, upon demand, fail or refuse to account with the president and directors elected or appointed to succeed them, and to transfer to them forthwith all the money, books, papers, choses in action, property and effects of every kind and description belonging to such company, they shall be guilty of a Class I felony. The Governor is hereby authorized, at the request of the president, directors and other officers of any railroad company, to make requisition upon the governor of any other state for the apprehension of any such president failing to comply with this section. (1870-1, c. 72, ss. 1-3; Code, ss. 2001, 2002; Rev., s. 3760; C.S.,

s. 4400; 1993 c. 539, ss. 157, 1215; 1993 (Reg. Sess., 1994), c. 767, s. 20.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, deleted the former second sentence, which read "All persons conspiring with any such president, directors or their agents to defeat, delay or hinder the execution of this section shall be guilty of a Class 1 misdemeanor."

§ 14-254. (See editor's note for date change) Malfeasance of corporation officers and agents.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 33.

Prison Breach and Prisoners.

§ 14-255. (Effective October 1, 1994 — See editor's note) Escape of working prisoners from custody.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-256. (Effective October 1, 1994 — See editor's note) Prison breach and escape from county or municipal confinement facilities or officers.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-257: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(12), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, c. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-258. (Effective October 1, 1994 — See editor's note) Conveying messages and weapons to or trading with convicts and other prisoners.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-258.1. (See editor's note for date change) Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Number of Conspiracy Counts Allowed. — Defendant could only be convicted of one count of conspiracy to provide an inmate with a controlled substance, even though four incidents occurred, where the offenses transpired over a short period of time, the participants in the conspiracies for which defendant was indicted remained the same, the indictments all averred the same objective, delivering controlled substances to the inmate coconspirator, and the state presented no evidence concerning the number of meetings which took place between defendant and the other participants. State v. Griffin, 112 N.C. App. 838, 437 S.E.2d 390 (1993).

§ 14-258.2. (See editor's note for date change) Possession of dangerous weapon in prison.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-258.3. (Effective October 1, 1994 — See editor's note) Taking of hostage, etc., by prisoner.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-259. (Effective October 1, 1994 — See editor's note) Harboring or aiding certain persons.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Article 34.

Custodial Institutions.

§ 14-268. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER IX. OFFENSES AGAINST THE PUBLIC PEACE.

Article 35.

Offenses Against the Public Peace.

§ 14-269. (See editor's note for date change) Carrying concealed weapons.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-269.1. Confiscation and disposition of deadly weapons.

Upon conviction of any person for violation of G.S. 14-2.2, 14-269, 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Extra Session c. 16, s. 2, effective May 1, 1994.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized

agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.

(5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received. (1965, c. 954, s. 2; 1967, c. 24, s. 3; 1983, c. 517; 1989, c. 216; 1993, c. 259, s. 2; 1994, Ex. Sess., c. 16, s. 2; c. 22, s. 23.)

Editor's note. — Session Laws 1994, Extra Session, c. 22, which amended this section, provides in s. 24: "Prosecutions for, or sentences based on, offenses committed before the effective dates of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Effect of Amendments. —

Session Laws 1994, Extra Session, c. 16, s. 2, effective May 1, 1994, repealed subdivisions (2) and (3) of this section.

Session Laws 1994, Extra Session, c. 22, s. 23, effective May 1, 1994, and applicable to offenses committed on or after that date, substituted "G.S. 14-2.2, 14-269, 14-269.7" for "G.S. 14-269, G.S. 14-269.7" in the introductory language.

§ 14-269.2. Weapons on campus or other educational property.

(a) The following definitions apply to this section:

(1) Educational property. — Any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education, school, college, or university board of trustees, or directors for the administration of any public or private educational institution.

(2) Student. — A person enrolled in a public or private school, college or university, or a person who has been suspended or expelled within the last five years from a public or private school, college or university, whether the person is an adult or a minor.

(3) Switchblade knife. — A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. — Any device enumerated in subsection (b) or (d) of this section.

(b) It shall be a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c) It shall be a Class I felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, or any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(d) It shall be a Class 1 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a Class 1 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) Notwithstanding subsection (b) of this section it shall be a Class 1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, on educational property if:

(1) The person is not a student attending school on the educational property;
(2) The firearm is not concealed within the meaning of G.S. 14-269;
(3) The firearm is not loaded and is in a locked container, a locked vehicle, or a locked firearm rack which is on a motor vehicle; and
(4) The person does not brandish, exhibit, or display the firearm in any careless, angry, or threatening manner.

(g) This section shall not apply to:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority;
(2) Armed forces personnel, officers and soldiers of the militia and national guard, law-enforcement personnel, and any private police employed by an educational institution, when acting in the discharge of their official duties; or
(3) Home schools as defined in G.S. 115C-563(a). (1971, c. 241, ss. 1, 2; c. 1224; 1991, c. 622, s. 1; 1993, c. 539, s. 164; c. 558, s. 1; 1994, Ex. Sess., c. 14, s. 4(b).)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 4(a), effective October 1, 1994, repeals Session Laws 1993, c. 539, s. 164, which as amended by 1994, Extra Session, c. 24, s. 14(c), effective October 1, 1994, would have amended this section as it read prior to amendment by Session Laws 1993, c. 558, s. 1 by substituting "Class 2 misdemeanor" for former penalty provisions.

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 1994, Extra Session, c. 14, s. 4(b), effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "that opens" for "or blades which open" in subdivision (a)(3); inserted "stun gun" in subsections (b), (c), (d), and (e); and inserted "Class 1" preceding "misdemeanor" in subsections (d), (e), and (f).

Legal Periodicals. — For note, "Annie Get Your Gun 'Cause Help Ain't Comin': The Need for Constitutional Protection From Peer Abuse in Public Schools," see 1993 Duke L.J. 588.

§ 14-269.3. (See editor's note for date change) Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-269.4. (Effective October 1, 1994 — See editor's note) Weapons on State property and in courthouses.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-269.6. (See editor's note for date change) Possession and sale of spring-loaded projectile knives prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-269.7. Prohibitions on handguns for minors.

(a) Any minor who possesses or carries a handgun is guilty of a Class 2 misdemeanor.

(b) This section does not apply:

(1) To officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties or acting under orders requiring them to carry handguns.

(2) To a minor who possesses a handgun for educational or recreational purposes while the minor is supervised by an adult who is present.
(3) To an emancipated minor who possesses such handgun inside his or her residence.
(4) To a minor who possesses a handgun while hunting or trapping outside the limits of an incorporated municipality if he has on his person written permission from a parent, guardian, or other person standing in loco parentis.

(c) The following definitions apply in this section:
(1) Handgun. — A firearm that has a short stock and is designed to be fired by the use of a single hand, or any combination of parts from which such a firearm can be assembled.
(2) Minor. — Any person under 18 years of age. (1993, c. 259, s. 1; 1994, Ex. Sess., c. 14, s. 5; 1993 (Reg. Sess., 1994), c. 597, s. 1.)

Editor's Note. —
Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor punishable by imprisonment for up to six months, a fine of up to five hundred dollars ($500.00), or both" in subsection (a).

The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995 and applicable to offenses committed on or after that date, in subdivision (c)(1) substituted "A" for "Any dangerous," substituted "that has a short stock and is" for "including a pistol or revolver" and added at the end "or any combination of parts from which such a firearm can be assembled"; and in subdivision (c)(2) deleted "the age of" preceding "18."

§§ 14-270, 14-271: Repealed by Session Laws 1994, Extra Session, c. 14, ss. 72, 73, effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-275.1. (Effective October 1, 1994 — See editor's note) Disorderly conduct at bus or railroad station or airport.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-276.1. (Effective October 1, 1994 — See editor's note) Impersonation of firemen or emergency medical services personnel.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-277. (See editor's note for date change) Impersonation of a law-enforcement or other public officer.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-277.1. (Effective October 1, 1994 — See editor's note) Communicating threats.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in Kaplan v. Prolife Action League, 111 N.C. App. 1, 431 S.E.2d 828 (1993).

§ 14-277.2. (See editor's note for date change) Weapons at parades, etc., prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-277.3. (See editor's note for date change) Stalking.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Legal Periodicals. — For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

§ 14-277.4. Obstruction of health care facilities.

(a) No person shall obstruct or block another person's access to or egress from a health care facility or from the common areas of the real property upon which the facility is located in a manner that deprives or delays the person from obtaining or providing health care services in the facility.

(b) No person shall injure or threaten to injure a person who is or has been:

(1) Obtaining health care services;
(2) Lawfully aiding another to obtain health care services; or
(3) Providing health care services.

(c) A violation of subsection (a) or (b) of this section is a Class 2 misdemeanor. A second conviction for a violation of either subsection (a) or (b) of this section within three years of the first shall be punishable as a Class 1 misdemeanor. A third or subsequent conviction for a violation of either subsection (a) or (b) of this section within three years of the second or most recent conviction shall be punishable as a Class I felony.

(d) Any person aggrieved under this section may seek injunctive relief in a court of competent jurisdiction to prevent threatened or further violations of this section. Any violation of an injunction obtained pursuant to this section constitutes criminal contempt and shall be punishable by a term of imprisonment of not less than 30 days and no more than 12 months.

(e) This section shall not prohibit any person from engaging in lawful speech or picketing which does not impede or deny another person's access to health care services or to a health care facility or interfere with the delivery of health care services within a health care facility.

(f) "Health care facility" as used in this section means any hospital, clinic, or other facility that is licensed to administer medical treatment or the primary function of which is to provide medical treatment in this State.

(g) "Health care services" as used in this section means services provided in a health care facility.

(h) Persons subject to the prohibitions in subsection (a) of this section do not include owners, officers, agents, or employees of the health care facility or law enforcement officers acting to protect real or personal property. (1993, c. 412, s. 1; 1994, Ex. Sess., c. 14, s. 6; 1993 (Reg. Sess., 1994), c. 767, s. 21.)

Editor's Note. —
Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, in subsection (c), substituted "Class 2 misdemeanor" for "misdemeanor punishable by a fine of not more than five hundred dollars ($500.00), imprisonment not to exceed six months, or both" in the first sentence, and substituted "Class 1" for "general" in the second sentence.

The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, deleted "or attempt" preceding "or threaten" in subsection (b).

CASE NOTES

Constitutionality — Standing. — Prolife abortion activists had legal standing to challenge the constitutionality of this section. Hoffman v. Hunt, 845 F. Supp. 340 (W.D.N.C. 1994).

United States District Court found that this section bore sufficient constitutional flaws to state a claim and posed a sufficiently imminent and real threat to plaintiffs' rights to cause a cognizable injury in fact to confer standing upon them to challenge the statute in court. Hoffman v. Hunt, 845 F. Supp. 340 (W.D.N.C. 1994).

SUBCHAPTER X. OFFENSES AGAINST THE PUBLIC SAFETY.

Article 36.

Offenses Against the Public Safety.

§ 14-278. (Effective October 1, 1994 — See editor's note) Willful injury to property of railroads.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-279. (Effective October 1, 1994 — See editor's note) Unlawful injury to property of railroads.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-279.1. (Effective October 1, 1994 — See editor's note) Unlawful impairment of operation of railroads.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-280. (Effective October 1, 1994 — See editor's note) Shooting or throwing at trains or passengers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-281. (Effective October 1, 1994 — See editor's note) Operating trains and streetcars while intoxicated.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-281.1. (Effective October 1, 1994 — See editor's note) Throwing, dropping, etc., objects at sporting events.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-282. (Effective October 1, 1994 — See editor's note) Displaying false lights on seashore.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-283. (Effective October 1, 1994 — See editor's note) Exploding dynamite cartridges and bombs.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-284. (Effective October 1, 1994 — See editor's note) Keeping for sale or selling explosives without a license.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-284.1. (See editor's note for date change) Regulation of sale of explosives; reports; storage.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-284.2. (See editor's note for date change) Dumping of toxic substances.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-285: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72, effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-286. (Effective October 1, 1994 — See editor's note) Giving false fire alarms; molesting fire-alarm, fire-detection or fire-extinguishing system.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-286.1. (Effective October 1, 1994 — See editor's note) Making false ambulance request.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would

be applicable but for this act remain applicable to those prosecutions."

§ 14-286.2. (See editor's note for date change) Interfering with emergency communication.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-287. (Effective October 1, 1994 — See editor's note) Leaving unused well open and exposed.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-288. (Effective October 1, 1994 — See editor's note) Unlawful to pollute any bottles used for beverages.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 36A.

Riots and Civil Disorders.

§ 14-288.2. (See editor's note for date change) Riot; inciting to riot; punishments.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Evidence Held Sufficient. — Evidence of defendant's resistance to being arrested and the apparent assault on police officer did not by itself appear sufficient to support the charge of participation in riotous activity. However, this conduct when coupled with the defendant's deliberate act of running into the table upon which the officer was standing while the riot was taking place, was clearly sufficient to show that the defendant "willfully engaged" in the riot. State v. Mitchell, 110 N.C. App. 250, 429 S.E.2d 580 (1993).

§ 14-288.4. (See editor's note for date change) Disorderly conduct.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-288.5. (See editor's note for date change) Failure to disperse when commanded a misdemeanor; prima facie evidence.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-288.6. (Effective October 1, 1994 — See editor's note) Looting; trespass during emergency.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-288.7. (See editor's note for date change) Transporting dangerous weapon or substance during emergency; possessing off premises; exceptions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-288.8. (See editor's note for date change) Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction; exceptions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-288.9. (See editor's note for date change) Assault on emergency personnel; punishments.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-288.12. (See editor's note for date change) Powers of municipalities to enact ordinances to deal with states of emergency.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-288.13. (See editor's note for date change) Powers of counties to enact ordinances to deal with states of emergency.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-288.14. Power of chairman of board of county commissioners to extend emergency restrictions imposed in municipality.

(a) The chairman of the board of commissioners of any county who has been requested to do so by a mayor may by proclamation extend the effect of any one or more of the prohibitions and restrictions imposed in that mayor's municipality pursuant to the authority granted in G.S. 14-288.12. The chairman may extend such prohibitions and restrictions to any area within his county in which he determines it to be necessary to assist in controlling the state of emergency within the municipality. No prohibition or restriction extended by proclamation by the chairman under the authority of this section shall apply within the limits of any other municipality, or within any area of the county over which the municipality has jurisdiction to enact general police-power ordinances, unless that other municipality by resolution consents to its application.

(b) Whenever any chairman of the board of county commissioners extends the effect of municipal prohibitions and restrictions under the authority of this section to any area of the county, it shall be deemed that a state of emergency has been validly found and declared with respect to such area of the county.

(c) Any chairman of a board of county commissioners extending prohibitions and restrictions under the authority of this section must take reasonable steps to give notice of its terms to those likely to be affected. The chairman of the board of commissioners shall proclaim the termination of any prohibitions and restrictions extended under the authority of this section upon:

(1) His determination that they are no longer necessary; or
(2) The determination of the board of county commissioners that they are no longer necessary; or
(3) The termination of the prohibitions and restrictions within the municipality.

(d) The powers authorized under this section may be exercised whether or not the county has enacted ordinances under the authority of G.S. 14-288.13. Exercise of this authority shall not preclude the imposition of prohibitions and restrictions under any ordinances enacted by the county under the authority of G.S. 14-288.13.

(e) **(Effective October 1, 1994 — See editor's note)** Any person who violates any provision of any prohibition or restriction extended by proclamation under the authority of this section is guilty of a Class 3 misdemeanor. (1969, c. 869, s. 1; 1993, c. 539, s. 196; 1994, Ex. Sess., c. 14, s. 7; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment by c. 14, s. 7, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, inserted "are" in subdivision (c)(1).

§ 14-288.15. (See editor's note for date change) Authority of Governor to exercise control in emergencies.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-288.19. (See editor's note for date change) Governor's power to order evacuation of public building.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-288.20. (See editor's note for date change) Certain weapons at civil disorders.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER XI. GENERAL POLICE REGULATIONS.

ARTICLE 37.

Lotteries, Gaming, Bingo and Raffles.

Part 1. Lotteries and Gaming.

§ 14-289. (Effective October 1, 1994 — See editor's note) Advertising lotteries.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-290. (Effective October 1, 1994 — See editor's note) Dealing in lotteries.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in Cole v. Hughes, 114 N.C. App. 424, 442 S.E.2d 86 (1994).

§ 14-291. (Effective October 1, 1994 — See editor's note) Selling lottery tickets and acting as agent for lotteries.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in Cole v. Hughes, 114 N.C. App. 424, 442 S.E.2d 86 (1994).

§ 14-291.1. (Effective October 1, 1994 — See editor's note) Selling "numbers" tickets; possession prima facie evidence of violation.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-291.2. (See editor's note for date change) Pyramid and chain schemes prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-292. (Effective October 1, 1994 — See editor's note) Gambling.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Cited in Cole v. Hughes, 114 N.C. App. 424, 442 S.E.2d 86 (1994).

§ 14-293. (Effective October 1, 1994 — See editor's note) Allowing gambling in houses of public entertainment; penalty.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-294. (Effective October 1, 1994 — See editor's note) Gambling with faro banks and tables.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-295. (Effective October 1, 1994 — See editor's note) Keeping gaming tables, illegal punchboards or slot machines, or betting thereat.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-297. (Effective October 1, 1994 — See editor's note) Allowing gaming tables, illegal punchboards or slot machines on premises.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-299. Property exhibited by gamblers to be seized; disposition of same.

CASE NOTES

Cited in Cole v. Hughes, 114 N.C. App. 424, 442 S.E.2d 86 (1994).

§ 14-300. (Effective October 1, 1994 — See editor's note) Opposing destruction of gaming tables and seizure of property.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-303. Violation of two preceding sections a misdemeanor.

A violation of any of the provisions of G.S. 14-301 or 14-302 shall be a Class 2 misdemeanor. (1923, c. 138, s. 5; C.S., s. 4437(c); 1993, c. 366, s. 2, c. 539, s. 210; 1994, Ex. Sess., c. 14, s. 8(b).)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 8(a), effective October 1, 1994, repealed Session Laws 1993, c. 539, s. 210, which effective October 1, 1994, would have amended this section as it read prior to amendment by Session Laws 1993, c. 366, s. 2 by substituting "Class 2 misdemeanor" for former penalty provisions.

Effect of Amendments. — The 1994 Extra Session amendment by c. 14, s. 8(b), effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court or both."

§ 14-309. Violation made misdemeanor.

Any person who violates any provision of G.S. 14-304 through 14-309 is guilty of a Class 2 misdemeanor. (1937, c. 196, s. 6; 1993, c. 366, s. 3, c. 539, s. 211; 1994, Ex. Sess., c. 14, s. 9(b).)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 9(a), effective October 1, 1994, repeals Session Laws 1993, c. 539, s. 210, which effective October 1, 1994, would have amended this section as it read prior to amendment by Session Laws 1993, c. 366, s. 3 by substituting "Class 2 misdemeanor" for former penalty provisions.

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment by c. 14, s. 9(b), effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 2 misdemeanor" for "misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court or both."

Part 2. Bingo and Raffles.

§ 14-309.5. (See editor's note for date change) Bingo.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-309.11. (See editor's note for date change) Accounting and use of proceeds.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-309.14. (Effective October 1, 1994 — See editor's note) Beach bingo.

Nothing in this Article shall apply to "beach bingo" games except for the following subdivisions:

(1) No beach bingo game may offer a prize having a value greater than ten dollars ($10.00). Any person offering a greater than ten-dollar ($10.00) but less than fifty-dollar ($50.00) prize is guilty of a Class 2 misdemeanor. Any person offering a prize of fifty dollars ($50.00) or greater is guilty of a Class I felony.

(2) No beach bingo game may be held in conjunction with any other lawful bingo game, with any "promotional bingo game", or with any offering of an opportunity to obtain anything of value, whether for valuable consideration or not. No beach bingo game may offer free bingo games as a promotion, for prizes or otherwise. Any person who violates this subsection is guilty of a Class I felony.

(3) G.S. 18B-308 shall apply to beach bingo games.

(4) Upon conviction under any provision of this section, such person shall not conduct a bingo game for a period of at least one year. (1983, c. 896, s. 3; 1983 (Reg. Sess., 1984), c. 1107, s. 10; 1987, c. 701; 1989 (Reg. Sess., 1990), c. 826, s. 2; 1993, c. 539, ss. 214, 1232; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — This section is reprinted to correct an error in the historical citation in the main pamphlet.

Session Laws 1993, c. 539, s. 1232 redesignated former subdivisions (a) and (b) as (1) and (2), respectively, but left the subdivision designations (c) and (d) unchanged. Subdivisions (c) and (d) have been redesignated as subdivisions (3) and (4), respectively, at the direction of the Revisor of Statutes.

Session Laws 1993, c. 539, which

amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-309.15. (See editor's note for date change) Raffles.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 38.

Marathon Dances and Similar Endurance Contests.

§§ 14-310 through 14-312: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 30(13)—(15), effective October 1, 1994.

Editor's Note. — Repealed § 14-311 would have been amended by Session Laws 1994, Extra Session, c. 14, s. 10, effective October 1, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 34, which repeals this section effective October 1, 1994, provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

ARTICLE 39.

Protection of Minors.

§ 14-313. (Effective October 1, 1994 — See editor's note) Selling cigarettes to minors.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-315. (Effective October 1, 1994 — See editor's note) Selling or giving weapons to minors.

(a) Sale of Weapons Other Than Handguns. — If a person sells, offers for sale, gives, or in any way transfers to a minor any pistol cartridge, brass knucks, bowie knife, dirk, shurikin, leaded cane, or slungshot, the person is guilty of a Class 1 misdemeanor and, in addition, shall forfeit the proceeds of any sale made in violation of this section.

(a1) Sale of Handguns. — If a person sells, offers for sale, gives, or in any way transfers to a minor any handgun as defined in G.S. 14-269.7, the person is guilty of a Class I felony and, in addition, shall forfeit the proceeds of any sale made in violation of this section. This section does not apply in any of the following circumstances:

(1) The handgun is lent to a minor for temporary use if the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful.

(2) The handgun is transferred to an adult custodian pursuant to Chapter 33A of the General Statutes, and the minor does not take possession of the handgun except that the adult custodian may allow the minor temporary possession of the handgun in circumstances in which the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful.

(3) The handgun is a devise or legacy and is distributed to a parent or guardian under G.S. 28A-22-7, and the minor does not take possession of the handgun except that the parent or guardian may allow the minor temporary possession of the handgun in circumstances in which the minor's possession of the handgun is lawful under G.S. 14-269.7 and G.S. 14-316 and is not otherwise unlawful.

(b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 597, s. 2, effective October 1, 1994.

(b1) Defense. — It shall be a defense to a violation of this section if all of the following conditions are met:

(1) The person shows that the minor produced an apparently valid permit to receive the weapon, if such a permit would be required under G.S. 14-402 or G.S. 14-409.1 for transfer of the weapon to an adult.

(2) The person reasonably believed that the minor was not a minor.

(3) The person either:

a. Shows that the minor produced a drivers license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing the minor's age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the minor; or

b. Produces evidence of other facts that reasonably indicated at the time of sale that the minor was at least the required age. (1893, c. 514; Rev., s. 3832; C.S., s. 4440; 1985, c. 199; 1993, c. 259, s. 3; 1993, c. 539, s.

217; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 597, s. 2.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —
The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995, and applicable to offenses committed on or after that date, in subsection (a) substituted "Sale of Weapons Other than Handguns" for "Offense" as the subsection catchline, substituted "a person sells, offers for sale, gives, or in any way transfers" for "any person shall sell, offer for sale, give or in any way dispose of," deleted "handgun as defined in G.S. 14-269.7, pistol" preceding "pistol cartridge," substituted "the person is" for "he shall be" and inserted "in addition"; added subsection (a1); deleted former subsection (b) regarding defense; and added subsection (b1).

§ 14-315.1. Storage of firearms to protect minors.

(a) Any person who resides in the same premises as a minor, owns or possesses a firearm, and stores or leaves the firearm (i) in a condition that the firearm can be discharged and (ii) in a manner that the person knew or should have known that an unsupervised minor would be able to gain access to the firearm, is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor and the minor:

(1) Possesses it in violation of G.S. 14-269.2(b);
(2) Exhibits it in a public place in a careless, angry, or threatening manner;
(3) Causes personal injury or death with it not in self defense; or
(4) Uses it in the commission of a crime.

(b) Nothing in this section shall prohibit a person from carrying a firearm on his or her body, or placed in such close proximity that it can be used as easily and quickly as if carried on the body.

(c) This section shall not apply if the minor obtained the firearm as a result of an unlawful entry by any person.

(d) "Minor" as used in this section means a person under 18 years of age who is not emancipated. (1993, c. 558, s. 2; 1994, Ex. Sess., c. 14, s. 11.)

Editor's Note. —
Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor if a minor gains" in the introductory language of subsection (a).

§ 14-315.2. Warning upon sale or transfer of firearm to protect minor.

(a) Upon the retail commercial sale or transfer of any firearm, the seller or transferor shall deliver a written copy of G.S. 14-315.1 to the purchaser or transferee.

(b) Any retail or wholesale store, shop, or sales outlet that sells firearms shall conspicuously post at each purchase counter the following warning in block letters not less than one inch in height the phrase: "IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM THAT CAN BE DISCHARGED IN A MANNER THAT A REASONABLE PERSON SHOULD KNOW IS ACCESSIBLE TO A MINOR."

(c) A violation of subsection (a) or (b) of this section is a Class 1 misdemeanor. (1993, c. 558, s. 2; 1994, Ex. Sess., c. 14, s. 12.)

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, inserted "Class 1" preceding "misdemeanor" in subsection (c).

§ 14-316. (See editor's note for date change) Permitting young children to use dangerous firearms.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-316.1. (Effective October 1, 1994 — See editor's note) Contributing to delinquency and neglect by parents and others.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-317. (Effective October 1, 1994 — See editor's note) Permitting minors to enter barrooms or billiard rooms.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-318. (Effective October 1, 1994 — See editor's note) Exposing children to fire.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-318.1. (Effective October 1, 1994 — See editor's note) Discarding or abandoning iceboxes, etc.; precautions required.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-318.2. (Effective October 1, 1994 — See editor's note) Child abuse a Class 1 misdemeanor.

(a) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of such child, who inflicts physical injury, or who allows physical injury to be inflicted, or who creates or allows to be created a substantial risk of physical injury, upon or to such child by other than accidental means is guilty of the Class 1 misdemeanor of child abuse.

(b) The Class 1 misdemeanor of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies. (1965, c. 472, s. 1; 1971, c. 710, s. 6; 1993, c. 539, s. 223; 1994, Ex. Sess., c. 14, s. 13; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective

date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1994 Extra Session amendment by c. 14, s. 13, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 1" for "general" in the catchline of this section.

§ 14-318.4. (Effective October 1, 1994 — See editor's note) Child abuse a felony.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-320.1. (Effective October 1, 1994 — See editor's note) Transporting child outside the State with intent to violate custody order.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-321. (Effective October 1, 1994 — See editor's note) Failing to pay minors for doing certain work.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 40.

Protection of the Family.

§ 14-322. (See editor's note for date change) Abandonment and failure to support spouse and children.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-326.1. (Effective October 1, 1994 — See editor's note) Parents; failure to support.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 41.

Alcoholic Beverages.

§ 14-329. (See editor's note for date change) Manufacturing, trafficking in, transporting, or possessing poisonous alcoholic beverages.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 44.

Regulation of Sales.

§ 14-342. (Effective October 1, 1994 — See editor's note) Selling or offering to sell meat of diseased animals.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-343. (Effective October 1, 1994 — See editor's note) Unauthorized dealing in railroad tickets.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-344. (Effective October 1, 1994 — See editor's note) Sale of admission tickets in excess of printed price.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-345: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(16), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-346. (See editor's note for date change) Sale of convict-made goods prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§§ 14-346.1, 14-346.2: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(17), (18), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 45.

Regulation of Employer and Employee.

§ 14-353. (Effective October 1, 1994 — See editor's note) Influencing agents and servants in violating duties owed employers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-355. (Effective October 1, 1994 — See editor's note) Blacklisting employees.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Request from Prospective Employer. — Statements made about a former employee in response to a request from a prospective employer are privileged under this section; for this section to be violated, the statements to the prospective employer would have to be unsolicited. Friel v. Angell Care Inc., 113 N.C. App. 505, 440 S.E.2d 111 (1994).

§ 14-356: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 30(16), effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 34, which repeals this section effective October 1, 1994, provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-357: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(19), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 46.

Regulation of Landlord and Tenant.

§ 14-358. (Effective October 1, 1994 — See editor's note) Local: Violation of certain contracts between landlord and tenant.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-359. (Effective October 1, 1994 — See editor's note) Local: Tenant neglecting crop; landlord failing to make advances; harboring or employing delinquent tenant.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Article 47.

Cruelty to Animals.

§ 14-360. (Effective October 1, 1994 — See editor's note) Cruelty to animals; construction of section.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-361. (Effective October 1, 1994 — See editor's note) Instigating or promoting cruelty to animals.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-361.1. (Effective October 1, 1994 — See editor's note) Abandonment of animals.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-362. (Effective October 1, 1994 — See editor's note) Cock fighting.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-362.1. (Effective October 1, 1994 — See editor's note) Animal fights, other than cock fights, and animal baiting.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-363. (Effective October 1, 1994 — See editor's note) Conveying animals in a cruel manner.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-363.1. (Effective October 1, 1994 — See editor's note) Living baby chicks or other fowl, or rabbits under eight weeks of age; disposing of as pets or novelties forbidden.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 49.

Protection of Livestock Running at Large.

§ 14-366. (Effective October 1, 1994 — See editor's note) Molesting or injuring livestock.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-367. (Effective October 1, 1994 — See editor's note) Altering the brands of and misbranding another's livestock.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-368. (Effective October 1, 1994 — See editor's note) Placing poisonous shrubs and vegetables in public places.

If any person shall throw into or leave exposed in any public square, street, lane, alley or open lot in any city, town or village, or in any public road, any mock orange or other poisonous shrub, plant, tree or vegetable, he shall be liable in damages to any person injured thereby and shall also be guilty of a Class 2 misdemeanor. (1887, c. 338; Rev., s. 3318; C.S., s. 4496; 1969, c. 1224, s. 3; 1993, c. 539, s. 247; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — This section is reprinted to correct an error in the historical citation in the main pamphlet.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-369: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(20), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 50.

Protection of Letters, Telegrams, and Telephone Messages.

§ 14-370. (Effective October 1, 1994 — See editor's note) Wrongfully obtaining or divulging knowledge of telephonic messages.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-371. (Effective October 1, 1994 — See editor's note) Violating privacy of telegraphic messages; failure to transmit and deliver same promptly.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-372. (Effective October 1, 1994 — See editor's note) Unauthorized opening, reading or publishing of sealed letters and telegrams.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 51.

Protection of Athletic Contests.

§ 14-373. (Effective October 1, 1994 — See editor's note) Bribery of players, managers, coaches, referees, umpires or officials.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-374. (Effective October 1, 1994 — See editor's note) Acceptance of bribes by players, managers, coaches, referees, umpires or officials.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-377. (Effective October 1, 1994 — See editor's note) Intentional losing of athletic contest or limiting margin of victory or defeat.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 51A.

Protection of Horse Shows.

§ 14-380.1. (Effective October 1, 1994 — See editor's note) Bribery of horse show judges or officials.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-380.2. (Effective October 1, 1994 — See editor's note) Bribery attempts to be reported.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 52.

Miscellaneous Police Regulations.

§ 14-381. (Effective October 1, 1994 — See editor's note) Desecration of State and United States flag.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-382. (Effective October 1, 1994 — See editor's note) Pollution of water on lands used for dairy purposes.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-383. (Effective October 1, 1994 — See editor's note) Cutting timber on town watershed without disposing of boughs and debris; misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-384. (Effective October 1, 1994 — See editor's note) Injuring notices and advertisements.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-385. (Effective October 1, 1994 — See editor's note) Defacing or destroying public notices and advertisements.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-386: Repealed by Session Laws 1994, Extra Session, c. 14, s. 72(21), effective October 1, 1994.

Editor's Note. — Session Laws 1994, Extra Session, c. 14, s. 73, which repeals this section effective October 1, 1994, provides: "This act applies to offenses occurring on or after the effective date of this act. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-389: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 30(17), effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 34, which repeals this section effective October 1, 1994, provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-391. (Effective October 1, 1994 — See editor's note) Usurious loans on household and kitchen furniture or assignment of wages.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-394. (Effective October 1, 1994 — See editor's note) Anonymous or threatening letters, mailing or transmitting.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-395. (Effective October 1, 1994 — See editor's note) Commercialization of American Legion emblem; wearing by nonmembers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-395.1. (See editor's note for date change) Sexual harassment.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§§ 14-396, 14-397: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 30(18), (19), effective October 1, 1994.

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 34, which repeals this section effective October 1, 1994, provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 14-398. (Effective October 1, 1994 — See editor's note) Theft or destruction of property of public libraries, museums, etc.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-399. (See editor's note for date change) Littering.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-399.2. (See editor's note for date change) Certain plastic yoke and ring type holding devices prohibited.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-400. (Effective October 1, 1994 — See editor's note) Tattooing prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401. (Effective October 1, 1994 — See editor's note) Putting poisonous foodstuffs, antifreeze, etc., in certain public places, prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.1. (Effective October 1, 1994 — See editor's note) Misdemeanor to tamper with examination questions.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.2. (Effective October 1, 1994 — See editor's note) Misdemeanor for detective to collect claims, accounts, etc.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.3. (Effective October 1, 1994 — See editor's note) Inscription on gravestone or monument charging commission of crime.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.4. (See editor's note for date change) Identifying marks on machines and apparatus; application to Division of Motor Vehicles for numbers.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.5. (Effective October 1, 1994 — See editor's note) Practice of phrenology, palmistry, fortune-telling or clairvoyance prohibited.

It shall be unlawful for any person to practice the arts of phrenology, palmistry, clairvoyance, fortune telling and other crafts of a similar kind in the counties named herein. Any person violating any provision of this section shall be guilty of a Class 2 misdemeanor.

This section shall not prohibit the amateur practice of phrenology, palmistry, fortune telling or clairvoyance in connection with school or church socials, provided such socials are held in school or church buildings.

Provided that the provisions of this section shall apply only to the Counties of Alexander, Ashe, Avery, Bladen, Brunswick, Buncombe, Burke, Caldwell, Camden, Carteret, Caswell, Chatham, Chowan, Clay, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Franklin, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hoke, Iredell, Johnston, Lee, Lenoir, Madison, Martin, McDowell, Mecklenburg, Moore, Nash, New Hanover, Onslow, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Surry, Transylvania, Union, Wake and Wayne. (1951, c. 314; 1953, cc. 138, 227, 328; 1955, cc. 55, 454; 1957, cc. 151, 166, 309, 355, 915; 1959, cc. 428, 1018; 1961, c. 271; 1969, c. 1224, s. 20; 1973, cc. 12, 195; 1975, cc. 331, 351; 1977, c. 335; 1993, c. 539, s. 275; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 596, s. 1.)

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994 and applicable to offenses committed on or after that date, deleted "Bertie," "Gates," "Hertford," "Northhampton," "Vance," and "Warren" from the list in the third paragraph and added "Wayne."

§ 14-401.6. (See editor's note for date change) Unlawful to possess, etc., tear gas except for certain purposes.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.7. (Effective October 1, 1994 — See editor's note) Persons, firms, banks and corporations dealing in securities on commission taxed as a private banker.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.8. (Effective October 1, 1994 — See editor's note) Refusing to relinquish party telephone line in emergency; false statement of emergency.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.9. (Effective October 1, 1994 — See editor's note) Parking vehicle in private parking space without permission.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.10. (Effective October 1, 1994 — See editor's note) Soliciting advertisements for official publications of law-enforcement officers' associations.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.11. (See editor's note for date change) Distribution of certain food at Halloween and all other times prohibited.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.12. (See editor's note for date change) Soliciting charitable contributions by telephone.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.13. (See editor's note for date change) Failure to give right to cancel in off-premises sales.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-401.14. (Effective October 1, 1994 — See editor's note) Ethnic intimidation; teaching any technique to be used for ethnic intimidation.

(a) If a person shall, because of race, color, religion, nationality, or country of origin, assault another person, or damage or deface the property of another person, or threaten to do any such act, he shall be guilty of a misdemeanor punishable by imprisonment up to two years, or a fine, or both.

(b) A person who assembles with one or more persons to teach any technique or means to be used to commit any act in violation of subsection (a) of this section is guilty of a Class 1 misdemeanor. (1991, c. 493, s. 1; 1993, c. 332, s. 1; c. 539, s. 283; 1994, Ex. Sess., c. 14, s. 14(b); c. 24, s. 14(c).)

Editor's Note. —
Session Laws 1994, Extra Session, c. 14, s. 14(a), effective October 1, 1994, repeals Session Laws 1993, c. 539, s. 283, which effective October 1, 1994, in this section as it read prior to amendment by Session Laws 1993, c. 322, s. 1, would have substituted "Class 1 misdemeanor" for former penalty provisions in present subsection (a).

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —
The 1994 Extra Session amendment by c. 14, s. 14(b), effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "Class 1 misdemeanor" for "misdemeanor punishable by imprisonment of up to two years, a fine, or both" in subsection (b).

ARTICLE 52A.

Sale of Weapons in Certain Counties.

§ 14-402. (Effective October 1, 1994 — See editor's note) Sale of certain weapons without permit forbidden.

Applicability of this Article. — Tyrrell was deleted from the list of counties excepted from this Article by Session Laws 1993 (Reg. Sess., 1994), c. 581, s. 1. Madison, Polk, and Yancey were deleted from the list by Session Laws 1993 (Reg. Sess., 1994), c. 634, ss. 1 and 2.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-408. (Effective October 1, 1994 — See editor's note) Violation of § 14-406 or 14-407 a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-409. (See editor's note for date change) Machine guns and other like weapons.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 53.

Sale of Weapons in Certain Other Counties.

§ 14-409.1. (Effective October 1, 1994 — See editor's note) Sale of certain weapons without permit forbidden.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Counties to Which Article Applies. — Tyrrell was deleted from the list of counties to which this Article applies by Session Laws 1993 (Reg. Sess., 1994), c. 581, s. 1. Madison, Polk, and Yancey were deleted from the list by Session Laws 1993 (Reg. Sess., 1994), c. 634, ss. 1 and 2.

§ 14-409.8. (Effective October 1, 1994 — See editor's note) Violation of § 14-409.5 or 14-409.6 a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 14-409.9. (See editor's note for date change) Machine guns and other like weapons.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 54.

Sale, etc., of Pyrotechnics.

§ 14-410. Manufacture, sale and use of pyrotechnics prohibited; public exhibitions permitted; common carriers not affected.

It shall be unlawful for any individual, firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, use or cause to be discharged any pyrotechnics of any description whatsoever within the State of North Carolina: provided, however, that it shall be permissible for pyrotechnics to be exhibited, used or discharged at public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations: provided, further, that the use of said pyrotechnics in connection with public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, shall be under supervision of experts who have previously secured written authority from the board of county commissioners of the county in which said pyrotechnics are to be exhibited, used or discharged; provided, further, that such written authority from the board of commissioners is not required for a public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill; provided, further, that it shall not be unlawful for a common carrier to receive, transport, and deliver pyrotechnics in the regular course of its business. (1947, c. 210, s. 1; 1993 (Reg. Sess., 1994), c. 660, s. 3.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, inserted "; provided, further, that such written authority from the board of commissioners is not required for a public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by the University of North Carolina or the University of North Carolina at Chapel Hill" preceding "provided, further, that it shall not be unlawful for a common carrier".

§ 14-413. Permits for use at public exhibitions.

For the purpose of enforcing the provisions of this article, the board of county commissioners of any county are hereby empowered and authorized to issue permits for use in connection with the conduct of public exhibitions, such as fairs, carnivals, shows of all descriptions and public exhibitions, but only after satisfactory evidence is produced to the effect that said pyrotechnics will be used for the aforementioned purposes and none other. Provided that no such permit shall be required for a public exhibition authorized by the University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill. (1947, c. 210, s. 4; 1993 (Reg. Sess., 1994), c. 660, s. 3.1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, added the last sentence.

§ 14-415. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 54A.

The Felony Firearms Act.

§ 14-415.1. (See editor's note for date change) Possession of firearms, etc., by felon prohibited.

Editor's Note. —
Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

CASE NOTES

Prosecution for Possession of Firearm by Ex-Felon in Violation of 18 U.S.C. § 922(g)(1). —
Felon convicted of manslaughter whose civil rights were restored was entitled to possess firearms or any type of firearm in his home or business, and all restrictions on his possession of firearms ceased after five years. As a result, the district court erred in denying defendant's motion to dismiss count charging him with violating 18 U.S.C. § 922(g)(1) by possessing firearms in his home. United States v. Shoemaker, 2 F.3d 53 (4th Cir. 1993).

§ 14-415.3. Possession of a firearm or weapon of mass destruction by persons acquitted of certain crimes by reason of insanity or persons determined to be incapable to proceed prohibited.

(a) It is unlawful for the following persons to purchase, own, possess, or have in the person's custody, care, or control, any firearm or any weapon of mass death and destruction as defined by G.S. 14-288.8(c):

(1) A person who has been acquitted by reason of insanity of any crime set out in G.S. 14-415.1(b) or any violation of G.S. 14-33(b)(1), 14-33(b)(8), or 14-34.

(2) A person who has been determined to lack capacity to proceed as provided in G.S. 15A-1002 for any crime set out in G.S. 14-415.1(b) or any violation of G.S. 14-33(b)(1), 14-33(b)(8), or 14-34.

(b) A violation of this section is a Class H felony. Any firearm or weapon of mass death and destruction lawfully seized for a violation of this section shall be forfeited to the State and disposed of as provided in G.S. 15-11.1. (1994, Ex. Sess., c. 13, s. 1.)

Editor's Note. — Session Laws 1994, Extra Session, c. 13, s. 2 makes this section effective May 1, 1994, and provides that the criminal violation created by this section is applicable to offenses committed on or after the effective date of the act.

ARTICLE 55.

Handling of Poisonous Reptiles.

§ 14-422. (Effective October 1, 1994 — See editor's note) Violation made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 56.

Debt Adjusting.

§ 14-424. (Effective October 1, 1994 — See editor's note) Engaging, etc., in business of debt adjusting a misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 58.

Records, Tapes and Other Recorded Devices.

§ 14-437. (Effective October 1, 1994 — See editor's note) Violation of Article; penalties.

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 59.

Public Intoxication.

§ 14-444. (See editor's note for date change) Intoxicated and disruptive in public.

Editor's Note. — Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 60.

Computer-Related Crime.

§ 14-453. Definitions.

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

(1) "Access" means to instruct, communicate with, cause input, cause output, cause data processing, or otherwise make use of any resources of a computer, computer system, or computer network.

(1a) "Authorization" means having the consent or permission of the owner, or of the person licensed or authorized by the owner to grant consent or permission to access a computer, computer system, or computer network in a manner not exceeding the consent or permission.

(2) "Computer" means an internally programmed, automatic device that performs data processing or telephone switching.

(3) "Computer network" means the interconnection of communication systems with a computer through remote terminals, or a complex consisting of two or more interconnected computers or telephone switching equipment.

(4) "Computer program" means an ordered set of data that are coded instructions or statements that when executed by a computer cause the computer to process data.

(5) "Computer software" means a set of computer programs, procedures and associated documentation concerned with the operation of a computer, computer system, or computer network.

(6) "Computer system" means at least one computer together with a set of related, connected, or unconnected peripheral devices.

(6a) "Data" means a representation of information, facts, knowledge, concepts, or instructions prepared in a formalized or other manner and intended for use in a computer, computer system, or computer network. Data may be embodied in any form including, but not limited to, computer printouts, magnetic storage media, and punch cards, or may be stored internally in the memory of a computer.

(7) "Financial instrument" includes any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card or marketable security, or any electronic data processing representation thereof.

(8) "Property" includes financial instruments, information, including electronically processed or produced data, and computer software and computer programs in either machine or human readable form, and any other tangible or intangible item of value.

(8a) "Resource" includes peripheral devices, computer software, computer programs, and data, and means to be a part of a computer, computer system, or computer network.

(9) "Services" includes computer time, data processing and storage functions. (1979, c. 831, s. 1; 1993 (Reg. Sess., 1994), c. 764, s. 1.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective December 1, 1994, and applicable to offenses committed on or after that date, rewrote this section.

§ 14-454. (See note) Accessing computers.

(a) It is unlawful to willfully, directly or indirectly, access or cause to be accessed any computer, computer system, computer network, or any part thereof, for the purpose of:

(1) Devising or executing any scheme or artifice to defraud, unless the object of the scheme or artifice is to obtain educational testing material, a false educational testing score, or a false academic or vocational grade, or

(2) Obtaining property or services other than educational testing material, a false educational testing score, or a false academic or vocational grade for a person, by means of false or fraudulent pretenses, representations or promises.

A violation of this subsection is a Class G felony if the fraudulent scheme or artifice results in damage of more than one thousand dollars ($1,000), or if the property or services obtained are worth more than one thousand dollars ($1,000). Any other violation of this subsection is a Class 1 misdemeanor.

(b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any computer, computer system, or computer network for any purpose other than those set forth in subsection (a) above, is guilty of a Class 1 misdemeanor.

(c) For the purpose of this section, the term "accessing or causing to be accessed" includes introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer system, or computer network. (1979, c. 831, s. 1; 1979, 2nd Sess., c. 1316, s. 19; 1981, cc. 63, 179; 1993, c. 539, s. 293; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 764, s. 1.)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective December 1, 1994, and applicable to offenses committed on or after that date, in subsection (a) substituted "It is unlawful to" for "A person is guilty of a Class H felony if he," substituted "access or cause" for "accesses or causes"; substituted "a person" for "himself or another" in subdivision (a)(2); added the last paragraph of subsection (a); substituted "or computer network" for "computer network, or any part thereof" in subsection (b); and added subsection (c).

§ 14-455. (See note) Damaging computers, computer systems, computer networks, and resources.

(a) It is unlawful to willfully and without authorization alter, damage, or destroy a computer, computer system, computer network, or any part thereof. A violation of this subsection is a Class G felony if the damage caused by the alteration, damage, or destruction is more than one thousand dollars ($1,000). Any other violation of this subsection is a Class 1 misdemeanor.

Class 1

(b) This section applies to alteration, damage, or destruction effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer system, or computer network. (1979, c. 831, s. 1; 1979, 2nd Sess., c. 1316, s. 20; 1981, cc. 63, 179; 1993, c. 539, s. 294; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 764, s. 1.)

Editor's Note. —

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

The section above was amended by Session Laws 1993 (Reg. Sess., 1994), c. 764, s. 1 in the coded bill drafting format provided by § 120-20.1. The act failed to set out and engross the change to subsection (b) made by Session Laws 1993, c. 539. Subsection (b) is nevertheless set out above as amended by Session Laws 1993 (Reg. Sess., 1994), c. 764, s. 1 at the direction of the Revisor of Statutes.

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective December 1, 1994, and applicable to offenses committed on or after that date, rewrote this section.

§ 14-456. (See note) Denial of computer services to an authorized user.

(a) Any person who willfully and without authorization denies or causes the denial of computer, computer system, or computer network services to an authorized user of the computer, computer system, or computer network services is guilty of a Class 1 misdemeanor.

(b) This section also applies to denial of services effectuated by introducing, directly or indirectly, a computer program (including a self-replicating or a self-propagating computer program) into a computer, computer system, or computer network. (1979, c. 831, s. 1; 1993, c. 539, s. 295; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 764, s. 1.)

Editor's Note. — The section above was amended by Session Laws 1993 (Reg. Sess., 1994), c. 764, s. 1 in the coded bill drafting format provided by § 120-20.1. The act failed to incorporate the changes in subsection (a) made by Session Laws 1993, c. 539. Subsection (a) is set out in the form above at the direction of the Revisor of Statutes.

Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1993 (Reg. Sess., 1994) amendment, effective December 1, 1994, and applicable to offenses committed on or after that date, rewrote this section.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1994

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1994 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina